



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal Nos.1609, 1987, 1988 & 1989 of 2014
and
Miscellaneous Petition Nos.1, 1, 1 & 1 of 2014

C.M.A.No.1609 of 2014:

The Chairman & Managing Director
Andhrapradesh State Road Transport Corporation
Hyderabad, Andhrapradesh

...Appellant/2nd respondent in
MCOP No.75/2010

Vs.

1. Varun (Minor)

Rep.by his father R.Veeraiah

.... Respondent/Petitioner in
MCOP No.75/2010

2. B. J. Kumar

[R2 remained ex-parte before Tribunal.
Hence notice to R2 dispensed with]

.... Respondent/1st Respondent
in MCOP No.75/2010

C.M.A.No.1987 of 2014:

The Managing Director
Andhrapradesh State Road Transport Corporation
Hyderabad.

.... Appellant / 2nd Respondent
in MCOP No.652/2009

Vs.



WEB COPY

C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

1. R.Veeraiah

.... Respondent/Petitioner in
MCOP No.652/2009

2. B. J. Kumar

[R2 remained ex-parte before Tribunal.
Hence notice to R2 dispensed with]

.... Respondent/1st Respondent
in MCOP No.652/2009

C.M.A.No.1988 of 2014:

The Managing Director
Andhrapradesh State Road Transport Corporation
Hyderabad.

...Appellant/2nd respondent in
MCOP No.653/2009

Vs.

1. V.Srinivasalu.

.... Respondent/Petitioner in
MCOP No.653/2009

2. B. J. Kumar

[R2 remained ex-parte before Tribunal.
Hence, notice to R2 dispensed with]

.... Respondent/1st Respondent
in MCOP No.653/2009

C.M.A.No.1989 of 2014:

The Chairman & Managing Director
Andhrapradesh State Road Transport Corporation
Hyderabad.

...Appellant/2nd respondent in
MCOP No.697/2009

Vs.

1. Karan (Minor)

Rep. by his father R.Veeraiah

.... Respondent/Petitioner in
MCOP No.697/2009



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

2. B. J. Kumar

[R2 remained ex-parte before Tribunal.

Hence, notice to R2 dispensed with]

.... Respondent/1st Respondent
in MCOP No.697/2009

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree made in M.C.O.P.Nos.75 of 2010, 652 of 2009, 653 of 2009 and 697 of 2009 respectively, passed by the Motor Accident Claims Tribunal/ Additional Special Judge, Krishnagiri, dated 18.01.2013.

For Appellant in all CMAs	:	Ms. G. V. Shoba
For R1 in all CMAs	:	Mr. Mukund R. Pandiyan
For R2 in all CMAs	:	Ex-parte

COMMON JUDGMENT

The Transport Corporation has filed these appeals, challenging the liability as well as quantum fixed by the Motor Accidents Claims Tribunal, Additional Special Judge, Krishnagiri, in the Common Judgment passed in M.C.O.P.No.75 of 2010, M.C.O.P.No.652 of 2009, M.C.O.P.No.653 of 2009 and M.C.O.P.No.697 of 2009, dated 18.01.2013.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

3. The facts leading to the case is as follows:

On 08.11.2007 at about 11.00 a.m., the petitioner Veeraiah as a rider along with his minor children viz., Minor Varun, Minor Karan and one V.Srinivasalu were travelling in a two-wheeler, bearing Registration No.TN 24 C 2830 on Tirupattur-Kuppam Main Road, while they were nearing Kamathamuru Cross on Kuppam By-pass Road, a Transport Corporation Bus bearing Registration No.AP 10 Z 7912 belonging to the first respondent came in the opposite direction with rash and negligent manner, dashed against the two-wheeler causing injuries to all the four persons, who are travelled in the two-wheeler. Hence, they claimed a sum of Rs.15,00,000/-, Rs.7,00,000/-, Rs.7,00,000/- and Rs.7,00,000/- respectively as compensation, by filing separate Claim Petitions, for the injuries sustained by them.

4. The first respondent- driver of the bus remained ex-parte before Tribunal. The second respondent-Transport Corporation filed counter and contended that the Transport Corporation bus driver is not responsible for the accident. The rider of the two-wheeler along with three others were travelled in a single vehicle and unable to keep balance while driving his



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

two-wheeler, hit on the bus, which resulted in causing accident and the entire negligence is on the part of the rider of the two-wheeler, also the claimants and that the Transport Corporation shall not mulct with liability. Already a criminal case has been registered against the rider of the two-wheeler on the file of Kuppam police station and the injuries sustained are all only simple in nature and the compensation claimed is excessive and prays to dismiss the claim petitions.

5. The Tribunal has taken all the four claim petitions in M.C.O.P.Nos.75 of 2010, 652 of 2009, 653 of 2009 and 697 of 2009 for consideration and common evidence was recorded. On the side of the petitioners, P.W.1 to P.W.5 were examined and Exs.P1 to P30 were marked. On the side of the respondents R.W.1 to R.W.3 were examined and Exs.R1 and R2 were marked.

6. The Tribunal after considering the above evidence placed on record, in Point No.1 has held that the accident was occurred due to the negligent act of the driver of the Transport Corporation bus. In point No.2, the Tribunal has assessed the quantum and awarded a sum of Rs.8,24,400/-



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

as compensation to the claimant-Veeraiah; a sum of Rs.2,16,700/- awarded in favour of the Minor claimant-Karan; a sum of Rs.1,84,000/- awarded in favour of the Minor claimant-Varun and; a sum of Rs.3,35,800/- awarded in favour of the claimant-Srinivasalu.

7. Assailing the award passed by the Tribunal, the Transport Corporation has filed separate appeals, challenging the award of compensation to all the four claimants.

8. Mr. Mukund R. Pandiyan, learned counsel appearing on behalf of the Transport Corporation has submitted that in this case, admittedly, four persons have been travelled in the two-wheeler, which itself is sufficient to show that there is a gross negligence on the part of the claimants and the bus was hit by the two-wheeler on the rear side of the bus, which also has not been taken into consideration by the Tribunal. A criminal case was also registered against the rider of the two-wheeler namely, Veeraiah and he was arrested and final report was also filed against him. The Tribunal without considering the above facts, fixed the negligence on the part of the bus driver, which is totally against the evidence placed on record



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

and prays to set aside the same. The learned counsel further contended that the quantum awarded to the claimants, including multiplier method adopted for the injuries sustained by the claimants is not acceptable, since the Doctor, who has given Disability Certificate has not given treatment to the claimants and after four years, from the occurrence, the Doctor examined the claimants and given a Certificate, which could not be acceptable and multiplier method adopted for the two claimants is also liable to be set aside and prays to allow the appeal.

9. Countenancing the arguments, the learned counsel appearing for the claimants has submitted that, this is factually incorrect statement that the two-wheeler was hit the bus on the rear side and the accident itself has taken place while the two-wheeler was came in the opposite direction. Eventhough, four persons were travelled in the two-wheeler and the same is not a ground to hold that they are responsible for the accident. In the absence of evidence to show that due to four persons travelled in the two-wheeler, resulted in causing imbalance in riding the vehicle, mere travel of four persons alone is not sufficient to fix the negligence if any, on the part of the rider of the two-wheeler. He further submitted that by properly assessing



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

the injuries sustained by the claimants, compensation has been awarded by the Tribunal and the same need not be interfered with and that the present appeals have no merits and prays to dismiss these appeals.

10. I have considered the rival submissions of both sides and also perused the materials available on record.

11. Admittedly, it is the case of the claimants that four persons were travelled in the vehicle and the claimant-Veeraiah has ridden the vehicle at the time of accident. He has deposed before the Tribunal that on 08.11.2007 at about 11.00 a.m., he has ridden the Pulsar Motor-vehicle bearing Registration No.TN 24 C 2830 along with his two children and one V.Srinivasalu on Tirupattur to Kuppam Road towards Kuppam. He was riding his two-wheeler on the left hand side of the road, while the vehicle was reached near Kuppam By-pass Road, Kamathamuru Cross, the Transport Corporation Bus belongs to the second respondent came in the opposite direction and hit on the Pulsar Bike, which resulted in causing injuries to the claimants. Thereafter, he was immediately taken to the hospital.



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

12. In the cross examination, it is elicited a criminal case was registered against him. To prove the evidence of P.W.1, the Transport Corporation has examined R.W.1, the conductor of the bus, who was lodged the FIR and he has deposed before the Tribunal that the first respondent was driven the bus at the time of accident, the bus was taken from Kuppam to Tirupattur, while the bus was coming near Kamathamuru Cross Road, bus was turned on the right hand side after boarding passengers. While the bus was moving, he heard sound from the rear left hand side of the bus and immediately, the bus was stopped and seen that the Pulsar Bike, driven by one Veeraiah was hit on the rear left side of the bus. He had lodged a criminal complaint regarding the accident and a criminal case in Crime No.131 of 2007, under Section 337 IPC was registered based on his complaint.

13. On the side of the Transport Corporation, Circle Inspector of the Kuppam Police Station was examined as R.W.2 and he has stated that, he investigated Crime No.131 of 2007, under Section 337 was registered against the claimant-Veeraiah and filed the final report and Rough Sketch was also marked through him. He has also stated that the said criminal case was compounded between the parties in the Lok Adalat. His



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

evidence shows that the criminal case registered against the claimant-rider of the two-wheeler has been settled before the Lok Adalat, by compounding the offences between the parties. Ex.R2-Rough Sketch also shows that the two-wheeler had hit on the left hand rear side of the bus and the accident has not taken place as stated by the claimants, that the bus has hit the two-wheeler on the opposite direction. The Rough Sketch-Ex.R2 as well as the evidence of R.W.1, probabalise the case of the Transport Corporation Bus that the two-wheeler was hit the bus on the rear left hand side not from the opposite direction. The admission that four persons were travelled in the offending vehicle is sufficient to show that the two-wheeler was carrying four persons which is not only the violation of policy condition that two persons only allowed to travel but also increased the risk of negligent driving and also increased the possibility of losing balance to drive the vehicle safely. Combine reading of evidence placed on record shows that, the rider of two-wheeler and all the claimants acted negligently by travelling in two-wheeler, and contributed for accident. Accordingly, this Court is of the view that the claimants are also contributed 50% of the negligent act and also the driver of the bus also contributed 50% of the negligent act for causing the accident and accordingly, the liability is fixed at 50 : 50.



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

14. With regard to the quantum of compensation awarded to the claimant-Veeraiah is concerned, he has suffered fracture of right 7th and 8th ribs in the posterior aspect. Based on this two fractures and also other minor injuries caused, the Doctor has assessed the disability as 50%. The Tribunal after appreciating the injuries fixed at 35% disability as a functional disability.

15. It is the case of this claimant-Veeraiah that he was a driver, but no proof has been produced by the claimant before the Tribunal to show that he was a driver and the injuries sustained by him has no way reduce the capacity to do his regular avocation. In the absence of any evidence to show that the injuries sustained by him has causing reduction in his earning capacity, adoption of multiplier is on the higher side. Accordingly, the multiplier method adopted by the Tribunal is not proper and I am of the view that as per the Judgement of the Hon'ble Apex Court in ***Rajkumar vs. Ajaykumar*** reported in ***2011 (1) SCC 343***, the multiplier method adopted by the Tribunal is liable to be set aside. However, considering the percentage, I am inclined to grant Rs.2,000/- per percentage of injury by calculating 35% disability. Accordingly, this Court modified the award amount under the



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

head 'Permanent Disability' [2000 x 35%] = Rs.70,000/-. With regard to the other heads are concerned, the same is confirmed. Thus the compensation fixed by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent Disability	Rs.3,78,000/-	Rs.70,000/-	Reduced
2.	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
3.	Transport Charges	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Attender Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
5.	Nourishment Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Medical Expenses	Rs.3,31,400/-	Rs.3,31,400/-	Confirmed
7.	Loss of income during treatment period	Rs.30,000/-	Rs.30,000/-	Confirmed
	Total	Rs.8,24,400/-	Rs.5,16,400/-	Reduced by Rs.3,08,000/-

16. Since this Court has held that, rider of the two-wheeler i.e., Veeraiah is also contributed to the accident, he is entitled to get only 50% of the award amount as compensation fixed by this Court. Accordingly, he is entitled to get Rs.2,58,200/- as compensation.



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

17. With regard to the compensation to the minor claimant

Karan is concerned, the Tribunal has awarded a sum of Rs.70,000/- as compensation towards disability by granting a sum of Rs.2,000/- per percentage of disability. With regard to compensation to the minor claimant Varun is concerned, the Tribunal has awarded a sum of Rs.50,000/- as compensation towards disability by granting a sum of Rs.2,000/- per percentage of disability. The Hon'ble Apex Court in the judgment reported in ***Master Mallikarjun vs. Divisional Manager, the National Transport Corporation Limited and Another*** reported in **2008 (7) SCC 613**, has held that for the injured minor who are the non-earning members, the compensation has to be awarded based on the percentage of disability. The Hon'ble Apex Court fixed compensation payable for the percentage of disability as follows:

"...12....if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For Permanent Disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick."



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

18. In the present case, the minor appellant suffered disability at 35% and 25% respectively and as per the judgment of the Hon'ble Apex Court referred to above, the minor appellants are entitled to a sum of Rs.4,00,000/- and Rs.3,00,000/- respectively as compensation towards disability. The amount awarded by the Tribunal under other heads are hereby confirmed in both the cases. Thus the compensation fixed by the Tribunal is modified in Minor Karan case is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent Disability	Rs.70,000/-	Rs.4,00,000/-	Enhanced
2.	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-	Confirmed
3.	Transport Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
4.	Attender Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
5.	Nourishment Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Medical Expenses	Rs.91,700/-	Rs.91,700/-	Confirmed
	Total	Rs.2,16,700/-	Rs.5,46,700/-	Enhanced by by Rs.3,30,000/-

19. Since this Court has held that, rider of two-wheeler has also contributed to 50% of the award amount they are entitled to claim compensation only 50% from the Transport Corporation and remaining from



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

the owner of the two-wheeler, hence the claimant is entitled to get Rs.2,73,350/- as compensation from the Transport Corporation.

20. Thus the compensation fixed by the Tribunal is modified in

Minor Varun case is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent Disability	Rs.50,000/-	Rs.3,00,000/-	Enhanced
2.	Pain and Sufferings	Rs.20,000/-	Rs.20,000/-	Confirmed
3.	Transport Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
4.	Attender Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
5.	Nourishment Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Medical Expenses	Rs.84,000/-	Rs.84,000/-	Confirmed
	Total	Rs.1,84,000/-	Rs.4,34,000/-	Enhanced by by Rs.2,50,000/-

21. Since this Court has held that, rider of two-wheeler has also contributed to 50% of the award amount they are entitled to claim compensation only 50% from the Transport Corporation and remaining from the owner of the two-wheeler, hence the claimant is entitled to get Rs.2,17,000/- as compensation from the Transport Corporation.



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

22. With regard to the claimant-Srinivasalu is concerned, he has sustained injuries on the left nasal bone and left frontal bone and the Doctor has assessed disability at 40% but the Tribunal has taken as 25% disability and awarded a sum of Rs.50,000/- as compensation towards disability by granting a sum of Rs.2,000/- per percentage of disability and this Court finds that the same is just fair and reasonable and there is no need for interference in the above finding and the same is hereby confirmed. With regard to other heads are concerned, the total compensation awarded by the Tribunal under various heads of Rs.3,35,800/- is hereby confirmed.

23. Since this Court has held that, rider of two-wheeler has also contributed to 50% of the award amount they are entitled to claim compensation only 50% from the Transport Corporation and remaining from the owner of the two-wheeler, hence the claimant is entitled to get Rs.1,67,900/- as compensation from the Transport Corporation.

24. In the result,

(1) C.M.A.No.1987 of 2014 is partly allowed and the compensation awarded by the Tribunal at Rs.8,24,400/- is hereby reduced to



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

Rs.2,58,200/- [Rupees Two Lakhs Fifty Eight Thousand and Two Hundred only], together with interest at the rate of 7.5% per annum from the date of filing of Claim Petitions till the date of deposit.

(2) C.M.A.No.1988 of 2014 is partly allowed and the compensation awarded by the Tribunal at Rs.3,35,800/- is hereby reduced to Rs.1,67,900/- [Rupees One Lakh Sixty Seven Thousand and Nine Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petitions till the date of deposit.

(3) C.M.A.No.1989 of 2014 is dismissed and the compensation awarded by the Tribunal at Rs.2,16,700/- is hereby enhanced to Rs.2,73,350/- [Rupees Two Lakhs Seventy Three Thousand Three Hundred and Fifty only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petitions till the date of deposit.

(4) C.M.A.No.1609 of 2014 is dismissed and the compensation awarded by the Tribunal at Rs.1,84,000/- is hereby enhanced to Rs.2,17,000/- [Rupees Two Lakhs and Seventeen Thousand only] together



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

with interest at the rate of 7.5% per annum from the date of filing of Claim Petitions till the date of deposit.

(5) The appellant - Transport Corporation is directed to deposit the award amount in C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.75 of 2010, 652 of 2009, 653 of 2009 and 697 of 2009 respectively, on the file of the Motor Accidents Claims Tribunal, Additional Special Judge, Krishnagiri. On such deposit, the claimants are permitted to withdraw their respective award amount now determined by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. The award of the minor claimants are directed to be deposited in any one of the Nationalized Banks, till the minor claimants attains majority. On such deposit, R.Veeraiah, being the father of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. The appellant - Transport Corporation is permitted to withdraw the excess award amount, if any, lying in the credit of M.C.O.P.Nos.75 of 2010, 652 of 2009, 653 of 2009



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

and 697 of 2009 respectively, if the award amount has already been deposited by them. Since this Court has modifies the compensation, the respondents/claimants are directed to pay necessary Court fee, on the modified compensation, if any. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petitions stand closed.

27.07.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Additional Special Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



WEB COPY



C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

K.RAJASEKAR,J.

ssi

C.M.A.Nos.1609, 1987, 1988 & 1989 of 2014

27.07.2023