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C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

**C.M.A.No.2619 of 2014
and
Cross Objection No.57 of 2022
and
M.P No.1 of 2014 and CMP No.504 of 2017**

The Managing Director,
Andhra Pradesh State Road,
Transport Corporation,
Kuppam Depot, Kuppam

.. Appellant
in CMA No.2619 /2016
& Respondent in Cross
Obj. No.57 of 2022

Vs.

B.Settu

.. Respondent in
CMA No.2619/2016 &
Cross Appellant in
Cross Obj.57 of 2022



C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

Civil Miscellaneous Appeal and Cross Objection were filed against the Award and decree dated 16.09.2013 made in MCOP.No.57 of 2022 on the file of the Motor Accident Claims Tribunal/ Special Subordinate Judge/Krishnagiri.

For Appellant/Transport Corporation : Ms.G.V.Shoba

For Cross Objector/Claimant : Mr.Mukund R.Pandiyar

COMMON J U D G M E N T

The appellant/Transport Corporation preferred the present appeal in CMA. No. 2619 of 2014. The Claimants have filed Cross Objection No.57 of 2022. Both the cases are filed against the award and decree, dated 16.09.2013, passed by the Motor Accident Claims Tribunal / Special Subordinate Judge, Krishnagiri, in MCOP No.1528 of 2013.

2. As could be seen from the Claim Petition, the accident had occurred on 12.10.2009 at 9.00 a.m, at Narugur to Motlachenu Road, near



C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

Mamalla Fields. The Kuppam Police Station registered a case in Crime No.162 of 2009 in connection with the accident. As per the first information report, when the claimant was travelling along with one Sakthivel, in a TVS 50 Motor Cycle bearing Registration No.TCD 5012, a bus bearing Registration No.AP-11-Z-2924 belonging to the appellant/Transport Corporation came from Kuppam side in a rash and negligent manner and hit against them. Due to the accident, the claimant and the pillion rider Sakthivel sustained injuries. Hence, he filed a claim petition before the Tribunal, seeking compensation of Rs.10,00,000/-.

3. The Tribunal, on appreciation of both oral and documentary evidence came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the Transport Corporation bus and hence, directed the appellant/Transport Corporation to pay a sum of Rs.6,63,900/- with interest at the rate of 6% per annum from the date of claim till the date of realisation as compensation to the claimant.



C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

WEB COPY

4. Questioning the negligence and the quantum of award, the appellant/Transport Corporation has come forward with CMA.No.2619 of 2014.

5. Being not satisfied with the quantum of the award, the claimants have filed Cross Objection No.57 of 2022.

6. The learned counsel appearing on behalf of the appellant/Transport Corporation mainly contended that the quantum of compensation granted by the Tribunal is exorbitant. The Tribunal has erred in holding that the driver of the bus was solely responsible for the accident. The award passed by the Tribunal totally based on the evidences of PW1 and PW2. It failed to note that the rider of the TVS Moped came in the opposite side and dashed on the right side of the bus which was clearly revealed in the FIR. He further submitted that the medical records submitted



C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

by the respondent herein are bogus and manipulated to file a false claim. It has failed to note that there was no eye witness examined on the respondent's side to speak about the nature of the accident except the rider of the moped who is the interested witness. The Tribunal has fixed Rs.5000/- as monthly income of the respondent / claimant, for which, there is no documentary proof . It has failed to note that the PW3/Doctor has not treated the respondent and the same was admitted in the cross examination of PW3, but the Tribunal has admitted his evidence and the records submitted by him and awarded an excessive compensation. In the evidence of PW1, it is clearly deposed that he has no driving license and hence, he has not produced the same. It has failed to note that either PW1 or this respondent have not made the insurer as party to the MCOP. In spite of the objection made in the counter statement, the Transport Corporation has not made as party. But the Tribunal has failed to insist them to add them as party. The age of the claimant was wantonly given as very low only to get excessive compensation. No age proof and work proof were produced by



C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

the respondent. The Tribunal has erroneously adopted the multiplier method instead of adopting the percentage method. The two eye witnesses viz., LW1 and LW4 were wantonly and wilfully omitted to examine them. For the aforesaid reasons, the award is liable to set aside the Award and decree of the Tribunal by allowing this appeal.

7. On the other hand, the learned counsel for the cross objectors/ claimants contended that the claimant was working as Mason and and was earning about Rs.7,500/- per month at the time of accident. While so, the monthly income fixed by the Tribunal at Rs.5,000/- is very meager. The compensation awarded under the heads viz., pain and suffering, transport expenses, attender charges and future medical expenses are on the lower side. The Tribunal has failed to award any compensation towards loss of amenities. The interest awarded by the Tribunal at 6% is very low and the same has to be enhanced to 9%. Hence, he sought for enhancement of compensation.



C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

WEB COPY

8. Heard Mr. G.V.Shoba, learned counsel for the Transport Corporation and Mr.Mukund R.Pandiyan, the learned counsel appearing for the claimants/cross objectors.

9. As far as the negligence is concerned, as seen from the records the Tribunal has considered the contentions made in the FIR - Ex.P1 and as well as the oral evidence and arrived a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the bus bearing Registration No.AP-11-Z-2924 belonging to the appellant/Transport Corporation. Thus, the appellant/Transport Corporation was directed to pay compensation to the cross objector/claimant.

10. As far as the quantum of compensation is concerned, PW3/doctor assessed the permanent disability at 70%. On perusal of Ex.P2 wound certificate, Ex.P3- discharge summary, Ex.P4, MRI report and and Ex.P11,



C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

disability certificate would reveal that the claimant sustained severe fracture of right thigh femur bone, left chest right side neck and his right hand was affected by nerves weakness and post traumatic arthritis caused on his right knee and due to which, the claimant will not be able to do his mason work. Considering the said factors, the Tribunal has rightly fixed the disability at 55% and adopted multiplier method.

11. It is the contention of the cross objector/claimant that though the claimant was working as Mason and was earning not less than Rs.7,500/- per month at the time of accident, the Tribunal without considering the same, has fixed a sum of Rs.5000/- as notional income which is very low. But, no proof of income has been filed on his side. In the absence of any material evidence, considering the age and avocation of the claimant, the Tribunal has rightly fixed the monthly income and therefore, it does not call for any interference by this Court.



C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

WEB COPY

12. The other heads under which compensation was awarded by the Tribunal appears to be just and fair and they deserve no interference by this Court.

13. In the result,

(i) The Transport Corporation is directed to deposit the award amount i.e, Rs.6,63,900/- along with interest at the rate of 6% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.1528 of 2013 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the claimant along with accrued interest through RTGS within a period of two weeks thereafter.



C.M.A.No.2619 of 2014
& Cross Obj.No.57 of 2022

14. Accordingly, the Award passed by the Tribunal in MCOP No.1528 of 2013 dated 16.09.2013 on the file of the Motor Motor Accident Claims Tribunal/ Special Subordinate Judge/Krishnagiri, stands confirmed and both the Civil Miscellaneous Appeal and Cross Objection stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

20.04.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The Motor Accident Claims Tribunal,
Special Subordinate Court/Krishnagiri.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

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C.M.A.No.2619 of 2014
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A.A.NAKKIRAN, J.
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