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C.M.A.No.2856 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2856 of 2014

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

.. Appellant

Vs.

V.Sakthivel

..Respondent

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2013 made in MCOP.No.1565 of 2013 on the file of the Motor Accident Claims Tribunal/ Special Subordinate Court/Krishnagiri.

For Appellant : Ms.G.V.Shoba

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 16.09.2013 passed in MCOP.No.1565 of 2013, on the file of the Motor Accident Claims Tribunal/Special Subordinate Court/Krishnagiri.



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2. The Transport Corporation is the appellant, who filed this appeal questioning the quantum of compensation.

3. The accident occurred on 12.10.2009 at 9.00 a.m., when the respondent/claimant along with another person were travelling in the TVS 50 motor cycle bearing Regn.No.TCD-5012 proceeding on the left side of the road in Barugur to Motlachenu road near Mallamma fields, a bus bearing Regn.No.AP-11-Z-2924 belonging to the appellant/Transport Corporation, driven by its driver, who drove the same in a rash and negligent manner came from Kuppam side in the turning and dashed against the said moped and caused the accident. Due to the said impact, both them sustained injuries. The moped also sustained extensive damages. Both of them were admitted in P.E.S.Hospital, Kuppam as in-patients. The respondent/claimant had taken further treatment in NIMHANS Hospital, Bangalore. Thereafter, the claim petition was filed by the claimant and the Tribunal adjudicated the issues with reference to the documents and evidences. The appellant/Transport



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Corporation has defended their case. The Tribunal has awarded a total compensation of Rs.4,00,800/-.

4. The learned counsel appearing on behalf of the appellant/Transport Corporation mainly contended that the quantum of compensation granted by the Tribunal is exorbitant. He further submitted that 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 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 and the



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same is against the law and the probabilities of the case. 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 the respondent. It has wrongly applied the multiplier method without any proper proof or records which is not admitted in law. In other words, 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 in MCOP.No.1565 of



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2013. For the aforesaid reasons, the award is liable to set aside the Judgment and Decree of the Tribunal by allowing this appeal.

5. The learned counsel for the respondent/claimant disputed the said contention by stating that considering the grievousness of the injuries, the Tribunal awarded the compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. Insofar as the assessment of disability by the Tribunal is concerned, the PW3/Doctor assessed the disability at 40% for head injury and caused subdural haemorrhage, undisplaced fracture left frontal bone and fracture mastoid bone, due to which, he is often getting headache, giddiness and memory loss and tiredness. But, the Tribunal has reduced the disability and



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totally fixed the disability at 30% considering the nature of injuries and the evidence of PW3 and Ex.P13/disability certificate and Ex.P6/Wound certificate, Ex.P7/Emergency record; Ex.P9/Medical bills Ex.P12/CT Scan report. Hence, the disability fixed by the Tribunal is a correct assessment.

8. Considering the nature of the injuries as well as the disability sustained, this Court is of the considered opinion that the claimant is not permanently disabled and his earning capacity was not reduced and moreover he is a self-employed as mason and earning about Rs.7500/- per month. Therefore, there is no future loss of income. This being the factum, the award of compensation by adopting the multiplier is unnecessary. Contrary, a sum of Rs.3,000/- for 1% disability shall be granted considering the year of the accident is 2009. Accordingly, the compensation awarded under the head of loss of earning capacity is reduced to Rs.90,000/- by this Court instead of Rs.3,06,000/-. Similarly, under the head of partial loss of income is reduced to Rs.12000/- ($3000 \times 4 = 12000$) by this court instead of Rs.20000/- as assessed by the Tribunal.



WEB COPY 9. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and they do not call for any interference by this Court.

10. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of earning capacity	3,06,000/- (5000 x 12 x 17 x 30%)	Rs.90,000/- (Disability at 30% x 3000)
Pain and suffering	30,000/-	30,000/-
Nutrition and transportation	15,000/-	15,000/-
Future Medical Expenses	15,000/-	15,000/-
Attender charges	10,000/-	10,000/-
Partial loss of income	20,000/-	12,000/-
Total	4,00,800/-	1,72,000/-



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WEB COPY 11. In the result,

(i) This appeal is partly allowed and the Appellant / Transport Corporation is directed to deposit the modified award amount i.e, Rs.1,72,000/- 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.1565 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 respondent/claimant along with accrued interest through RTGS within a period of two weeks thereafter. No costs.

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



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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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