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C.M.A.No.2965 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2965 of 2014

1.M.Periyasamy(died)

2.Murugan

3.Pappu

4.Muthu

5.Geetha

(Appellants 2 to 5 were impleaded as
per the order of this Court dated
10.01.2023 made in CMP No.574,
578 and 579 of 2023)

.. Appellants

Vs.

The Managing Director
Metropolitan Transport Corporation Limited
Pallavan Salai
Chennai-600 002.

..Respondent

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.01.2013 made in MCOP No.3672 of 2008 on the file of the Motor Accident Claims Tribunal/X Additional Judge, Court of Small Causes, Chennai.



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For Appellants : Mr.T.G.Balachandran

For Respondent : Mr.Murali Vinodh

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J U D G M E N T

The judgment and decree dated 21.01.2013 passed in MCOP No.3672 of 2008 on the file of the Motor Accident Claims Tribunal /Additional Judge, Small Causes Court, Chennai, is under challenge in the present Civil Miscellaneous Appeal.

2. The 1st Appellant/claimant viz., M.Periyasamy unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement. Pending the appeal, the 1st appellant/claimant died and therefore, his legal heirs namely father, sisters and brother were impleaded as appellants 2 to 5.

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.93,750/-/- together with interest



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and costs to the 1st Appellant/claimant which is detailed hereunder:

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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Disability of 50% at Rs.2000/- per percentage	1,00,000/-
Pain and suffering	10,000/-
Medical expenses	5,000/-
Loss of Income	10,000/-
Total	1,25,000/-
Less 25% negligence	31,250/-
Total	93,750/-

4. Before the Tribunal, the 1st Appellant/claimant has filed 8 documents which were marked as Ex.P1 to Ex.P8 and examined himself as PW1 and the Doctors, who examined the claimant as PW2 and PW3. On the side of the respondent/Transport Corporation, the driver of the bus was examined as RW1 and no document was marked.

5. The learned counsel appearing on behalf of the appellants mainly contended that the compensation awarded by the Motor Accident Claims



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Tribunal is not in commensuration with the grievousness of the injuries sustained by the 1st appellant/claimant. As far as the negligence aspect is concerned, in the absence of any material evidence to prove the negligence on the part of the claimant, the Tribunal had committed grave error in fixing the contributory negligence on the part of the claimant at 25%, The 1st appellant/claimant sustained fracture on his left tibial condyle and also avulsion of two teeth and fracture of two teeth due to the accident and had taken treatment as inpatient for two days at Government Hospital as seen from the exhibit P2 discharge summary and he had been referred to Government Dental Hospital for the injury to the teeth as seen from Ex.P3 discharge summary. The doctor/PW2 assessed the disability for the dental injury at 30%. The doctor/PW3 assessed the disability for the fracture at 35%. Totally, the 1st appellant/claimant has suffered disability at 65%. However, the Tribunal has reduced the same and has assessed the disability at 50%. The disability compensation awarded by the Tribunal as seen from the impugned award is Rs.1,00,000/- calculated at Rs.2,000/- per percentage of disability and the same is to be enhanced. No amount was awarded



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under the head of loss of amenities, transport to hospital, extra nourishment and damages to cloth and articles. Further, the quantum of compensation awarded under the other heads are very meagre and hence, he prays to enhance the award.

6. The learned counsel appearing on behalf of the respondent/Transport Corporation refuted the contention raised by the appellants by stating that the 1st appellant/claimant did not suffer any grievous injuries and he had not taken treatment continuously in view of the fact that the injuries are not so grave. The Tribunal has rightly fixed the contributory negligence on the part of the 1st appellant/claimant. Therefore, the Tribunal has awarded a reasonable compensation and there is no error as such. Thus, the award given by the Tribunal is to be confirmed and the appeal is to be dismissed.

7. The accident occurred on 15.09.2008 at about 9.00 hours at Velachery Main Road, Narayanapuram near Pallikaranai Cut Fats

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Company. The Pallikaranai police station, Traffic Investigation registered a case in Crime No.1536 of 2008. The 1st appellant/claimant sustained grievous injuries viz., i) Fracture of (L) lateral tibial condyle, ii) Fracture of ribs 11, 12, 21 and 22, and iii) multiple injuries all over his body. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. As far as the negligence is concerned, the Tribunal had fixed 75% negligence on the part of the driver of the bus which belongs to the respondent Corporation and had also fixed contributory negligence at 25% on the part of the 1st appellant/claimant. But, no independent witness has been examined to prove that the claimant had driven the van in a rash and negligent manner and he is also responsible for the accident. In the absence of any such proof, in the considered view of this Court, it would be appropriate to fix 90% negligence on the part of the driver of the respondent/Transport Corporation and 10% negligence on the part of the van driver/claimant.



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8. The doctor/PW2 assessed the disability for the dental injury at 30%. The doctor/PW3 assessed the disability for the fracture at 35%.

Totally, the 1st appellant/claimant has suffered disability at 65%. However, the Tribunal has reduced the same to 50%. In the considered view of this Court, after giving due consideration to the nature of the injuries, this Court assesses the disability suffered by the 1st Appellant/claimant at 60%. As far as the quantum of compensation is concerned, the Tribunal has rightly fixed a sum of Rs.2,000/- for one percentage of disability since the accident occurred in the year 2008.

9. The Tribunal has awarded a sum of Rs.10,000/- towards loss of income during the treatment period which is low. The grievous injuries caused disability and due to which, the 1st appellant/claimant was incapacitated to perform his work in a routine and normal manner. In view of the fact that the 1st appellant/claimant was working as driver, this Court is of the considered view that at least for a period of three months, the 1st appellant/claimant would have been unable to do his work in a routine and



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normal manner. Hence, in the considered view of this Court, it would be appropriate to award a sum of Rs.15,000/- towards loss of income during the treatment period. The Tribunal has failed to award any amount towards loss of amenities, future medical expenses, extra nourishment and transport to hospital. In the considered view of this Court, it would be appropriate to award a compensation of Rs.10,000/- towards loss of amenities, Rs.10,000/- towards future medical expenses, Rs.3,000/- towards extra nourishment and Rs.4,000/- towards transport to hospital.

10. Insofar as the other heads of the compensation viz., pain and suffering and medical expenses are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

11. For the foregoing reasons, the award passed by the Tribunal is modified as follows:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Disability	1,00,000/- 2000 x 50	1,20,000/- 2000 x 60
Pain and Suffering	10,000/-	10,000/-
Medical Expenses	5,000/-	5,000/-
Loss of income during the treatment period	10,000/-	15,000/-
Loss of amenities	Nil	10,000/-
Future Medical Expenses	Nil	10,000/-
Extra Nourishment	Nil	3,000/-
Transport to hospital	Nil	4,000/-
Total	1,25,000/-	1,77,000/-
Less negligence	31,250/-	17,700/-
Total	93,750/-	1,59,300/-

Accordingly, the appellants are entitled to a compensation of Rs.1,59,300/- (Rupees one lakh fifty nine thousand three hundred only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and out of the entire award amount, the appellants are entitled to get equal share.



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12. In the result,

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(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.93,750/- to Rs.1,59,300/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.1,59,300/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of realization, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the appellants/claimants are permitted to withdraw their portion of the award amount by filing an appropriate application and the payments are to be made through RTGS.

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Index : Yes/No
Speaking Order/Non-Speaking Order
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To
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1.The Motor Accident Claims Tribunal,
X Additional Judge,
Court of Small Causes, Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.



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A.A.NAKKIRAN, J.

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