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C.M.A.No.816 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.816 of 2021

A.Arunkumar

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Salem.

... Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award dated 26.04.2012 and made in M.A.C.T.O.P.No.110 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Vaniyambadi.

For Appellant : M/s.A.Subadra
For Respondent : Mr.D.Nithin

J U D G M E N T

This appeal has been filed by the appellants/ claimants challenging the award passed in M.C.O.P.No.110 of 2010 dated 26.04.2012 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Vaniyambadi.



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2.The brief facts of the case is that on 12.01.2010 at about 13.00 hours, the appellant was riding in the two wheeler bearing Registration No.TN 23 M 2217 in Konamedu, Vaniyambadi to Vellore Main road in front of Ambedhkar Statue. At that time, the bus bearing Registration No.TN-30 N 0858 belonging to the respondent came from the opposite side in a rash and negligent manner and dashed against the motorcycle, due to which, the appellant sustained injuries.

3.Thereafter, the appellant / claimant filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.10 Lakhs as compensation. After adjudication, the Tribunal awarded a sum of Rs.4,90,500/- as compensation and fixed 50% contributory negligence on the part of the appellant and directed that the appellant is entitled to a sum of Rs.2,45,250/- as compensation along with interest at the rate of 7% per annum from the date of petition till the date of judgment in default to pay interest at the rate of 7% till the date of deposit. Aggrieved by the same, the claimant has preferred this appeal.

4.The learned counsel appearing for the appellant submitted



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that the appellant has filed this appeal questioning the 50% contributory negligence fixed on the appellant and for enhancement in compensation. The learned counsel further submitted that immediately after the accident, the appellant was taken to Government Hospital, Vaniyampadi and thereafter to Government Hospital, Vellore and thereafter to Government General Hospital, Chennai where amputation was done in the right leg and taking advantage of the same, the driver of the Transport Corporation Bus lodged complaint before the law enforcing agency as if the accident happened due to the negligence of the appellant and the Tribunal fastened 50% negligence on the part of the appellant, which is not sustainable one.

5.The learned counsel appearing for the appellant further submitted that F.I.R. and charge sheet are not conclusive proof to fasten 50% negligence on the part of the injured claimant and no contra evidence was adduced before the Tribunal except the driver of the respondent Corporation bus. Further, the Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as notional monthly income of the vegetable vendor in the year 2008. In the present case, the accident took place during the year 2010, however, the



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Tribunal fixed the monthly income of the injured at Rs.4,500/- and awarded a meagre compensation.

6.Per contra, the learned counsel appearing for the respondent Transport Corporation submitted that the F.I.R. was registered as against the injured claimant. The claimant drove the motorcycle in a rash and negligent manner and tried to overtake the bus belonging to the Transport Corporation and thereby the accident happened. Immediately, the driver of the Transport Corporation admitted the injured in the Hospital and made complaint before the law enforcing agency. Before the Tribunal, the appellant examined himself as P.W.1 and no independent eye witness was examined. In the absence of any eye witness, the Tribunal rightly fixed 50% contributory negligence on the part of the injured claimant, which warrants no interference. Further, the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable. Hence, the impugned judgment warrants no interference.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the materials available on record.



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8.It is alleged that on 12.01.2010 at about 13.00 hours, the appellant was riding the two wheeler in Konamedu, Vaniyambadi to Vellore Main road in front of Ambedkar Statue. At that time, the bus belonging to the respondent came from the opposite side in a rash and negligent manner and dashed against the motorcycle, due to which, the appellant sustained injuries.

9.The accident is not disputed. The dispute is with regard to the 50% contributory negligence fixed on the part of the injured claimant by the Tribunal and the quantum of compensation awarded by the Tribunal.

10.It is un-disputed fact that that immediately after the accident, the driver of the Transport Corporation admitted the injured claimant in the Hospital and made complaint before the law enforcing agency. Neither the appellant nor the driver of the Transport Corporation examined any independent eye witness to prove the negligence aspect. Hence, the Tribunal fixed 50% contributory negligence on the part of the injured claimant and 50% contributory negligence on the part of the driver of the Transport Corporation, which warrants no interference.



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11. With regard to the quantum of compensation, the Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as notional monthly income of the vegetable vendor in the year 2008. In the present case, the accident took place during the year 2010, however, the Tribunal fixed the monthly income of the injured at Rs.4,500/-, which in the opinion of this Court is low and this Court fix the monthly income of the injured as Rs.6,000/-. Though Doctor had assessed the disability of the injured at 55%, the Tribunal had fixed the disability of the injured as 40%. Since the assessment of disability varies from Doctor to Doctor, this Court fix the disability of the claimant as 50%. Since amputation was done on the claimant's right leg, he would not be able to continue his avocation as before and hence this Court fix whole body concept. Hence, the amount awarded for loss of income works out to Rs.12,24,000/- [$\text{Rs.6,000/-} \times 12 \times 17 = \text{Rs.12,24,000/-}$], out of which, the appellant claimant is entitled to Rs.6,12,000/- [$50\% \text{ of Rs.12,24,000/-} = \text{Rs.6,12,000/-}$] for loss of income.

12. This Court is of the opinion that some amount has to be awarded for future prospects and transportation. Accordingly, this Court awards 40% of loss of income for future prospects and the



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same works out to Rs.2,44,800/- [40% of Rs.6,12,000/- = Rs.2,44,800/-] and a sum of Rs.10,000/- for transportation. The amount awarded under the heads pain and sufferings, nutritious food and attender charges, in the opinion of this Court are low and hence, the amount awarded under the heads pain and sufferings is enhanced to Rs.50,000/- from Rs.25,000/-, nutritious food is enhanced to Rs.25,000/- from Rs.10,000/- and attender charges is enhanced to Rs.25,000/- from Rs.5,000/-. The amount awarded by the Tribunal under the head as per Ex.P6 – car hiring receipts is confirmed. The amount awarded by the Tribunal under the other heads in the opinion of this Court are not necessary and the same are deleted.

13.Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of income	Rs.3,67,200/-	Rs.6,12,000/-
2.	Permanent disability	Rs. 50,000/-	---
3.	Pain and sufferings	Rs. 25,000/-	Rs. 50,000/-
4.	Life comfort	Rs. 25,000/-	---
5.	Nutritious food	Rs. 10,000/-	Rs. 25,000/-
6.	Attender charges	Rs. 5,000/-	Rs. 25,000/-
7.	As per Ex.P6 Car hiring receipts	Rs. 8,500/-	Rs. 8,500/-
8.	Future prospects	---	Rs.2,44,800/-



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S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
9.	Transportation	---	Rs. 10,000/-
	Total	Rs.4,90,500/-	Rs.9,75,300/-

14.The Tribunal has awarded only 7% interest and this Court is inclined to award 7.5% interest. Accordingly, the appellant claimant is entitled to total compensation of Rs.9,75,300/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

15.The civil miscellaneous appeal is partly allowed. The judgment and award made in M.C.O.P.No.110 of 2010 dated 26.04.2012 by the Motor Accidents Claims Tribunal, Sub Judge, Vaniyambadi, is modified to the above extent.

16.The respondent Transport Corporation is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellant claimant is permitted to withdraw the entire amount, along with accrued interest, after deducting the



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amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

17.The appellant/ claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellant/ claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal, Sub Judge, Vaniyambadi, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellant/ claimant.

18.The civil miscellaneous appeal is partly allowed. No costs.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Sub Judge, Vaniyambadi.



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M.DHANDAPANI,J.
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