



C.M.A.No.3058 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.02.2023
Pronounced on	28.02.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.**

**C.M.A.No.3058 of 2021
and C.M.P.Nos.17379 of 2021 and 2754 of 2023**

The Managing Director,
Tamil Nadu State Transport Corporation (Kovai) Ltd.,
No.37, Mettupalayam Road,
Coimbatore, 641 043

...Appellant

Vs.

A.George Vincent

...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the award dated 17.09.2020 made in M.C.O.P.No.429



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of 2018 on the file of the Motor Accidents Claims Tribunal (Special Sub Court),

Krishnagiri.

For Appellant : Mr.Murali Vinodh

For Respondent : Mr.P.Paramasivados

JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

The appellant/Transport Corporation has preferred this Civil Miscellaneous Appeal as against the award dated 17.09.2020 in M.C.O.P.No.429 of 2018 passed by the Motor Accidents Claims Tribunal (Special Sub Court), Krishnagiri.

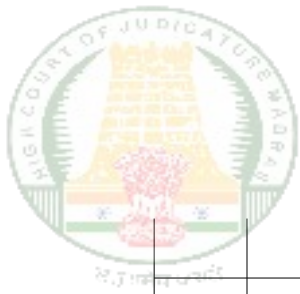
2.The Tribunal has passed an award in the original claim petition in M.C.O.P.No.429 of 2018 granting a total compensation of Rs.51,57,936/- together with interest at 7.5% per annum from the date of filing of the petition till the date of deposit, etc., in favour of the respondent/claimant and directed the appellant/Transport Corporation to pay the award amount within a period of two months from the date of passing of the award.



3.Before the Tribunal P.W.1 and P.W.2 were examined and Exs.P.1 to P.22 were marked on the side of the respondent/claimant and Ex.X1 to X5 on the side of P.W.2 respectively. No oral or documentary evidence let in on the side of the appellant/Transport Corporation. The Disability Certificate is marked as Ex.C.1.

4.As regards the quantum of compensation to be awarded the respondent/claimant in his claim petition had claimed a compensation of Rs.50,00,000/- and the break up figures of the same is as under:

<i>S.L. No.</i>	<i>Part-1</i>	<i>Amount</i>
<i>a</i>	<i>Loss of earning for future years</i>	<i>Rs.80,00,000</i>
<i>b</i>	<i>Partial loss earning form 23.12.17 to till date</i>	<i>Rs.3,00,000</i>
<i>c</i>	<i>Transport to Hospital</i>	<i>Rs.1,00,000</i>
<i>d</i>	<i>Extra Nourishment</i>	<i>Rs.50,000</i>
<i>d</i>	<i>Damages to clothing and articles</i>	<i>Rs.7,500</i>
<i>f</i>	<i>Others (i) Medical Expenses</i>	<i>Rs.8,00,000</i>
	<i>(ii)Future Medical Expenses</i>	<i>Rs.3,00,000</i>
	<i>(iii)Loss of Expectation of life</i>	<i>---</i>
	<i>(iv) Loss of love and affection</i>	<i>---</i>
	<i>(v) Loss of Future earning Potentiality</i>	<i>Rs.50,00,000</i>



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	<i>(vi) Attendants expenses</i>	<i>Rs.2,00,000</i>
<i>G</i>	<i>Compensation for pain and Suffering and mental agony</i>	<i>Rs.5,00,000</i>
<i>f</i>	<i>Compensation for continuing as permanent disability if any</i>	<i>Rs.15,00,000</i>
<i>g</i>	<i>Compensation of loss of earning power</i>	<i>Rs.15,00,000</i>
	<i>Total</i>	<i>Rs.1,82,57,500</i>

But the claim was Restricted to

Rs.50,00,000/-"

5.Before the Tribunal, the respondent/claimant examined himself as P.W.1. P.W.1 in his evidence has deposed that on 23.12.2017 at about 6.45 hours, he was riding his TVS Appachi Motor cycle bearing Registration No.TN-24-AJ-3442 from Coimbatore towards his native village at Krishnagiri. He was proceeding in the said vehicle on the left side of the road, slowly and cautiously, observing the traffic rules, from Western side towards Eastern side in Kovai - Salem NH47 main road. At that time the driver of the TNSTC bus bearing Registration No.TN-33/N - 2596 belonging to the appellant/Transport Corporation, drove the same in a rash and negligent manner, at an uncontrollable speed, came from northern direction and dashed against the motor cycle driven by the claimant/respondent and caused the accident. Due to the impact, the claimant/respondent sustained fracture on his left



foot, left knee and other regions of his left leg. In the said accident, his left leg was completely crushed. The further evidence of P.W.1 is that, immediately after the accident, he was taken to the Government hospital at Perundurai and thereafter, he was taken to Sparsh Hospital at Bangalore on 23.12.2017 and surgeries were done on various dates i.e., on 24.12.2017, 26.12.2017 and 27.12.2017 and also Investigations of Haematology, Serology and Biochemistry were done. He was under treatment from 23.12.2017 and was discharged on 06.01.2018. Again he was admitted in the same hospital on 30.01.2018 for further treatment and was discharged on 03.02.2018. After discharge, the respondent/claimant was under continuous treatment in the hospital at Krishnagiri. The respondent/claimant has spent about Rs.8,00,000/- for his medical expenses and he is in need of Rs.3,00,000/- for his future medical expenses. Apart from that he has spent a huge amount for his Transport, Attendants and Extra Nourishment expenses.

6.The further evidence of P.W.1 respondent/claimant is that at the time of accident he was 26 years of age and was working as Software Engineer in Messrs.Point Perfect Transcription Services India Pvt. Ltd., at Coimbatore. He was getting a salary of Rs.36,500/- per month and was an income-tax payer. He was



contributing his entire earnings for the maintenance and welfare of his family.

Upon consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.51,57,936/- under the following heads:

Sl.No.	Description	Amount awarded by the Tribunal (Rs.)
1.	Loss of income	41,69,760
2.	Medical Expenses	8,66,176
3.	Transport charges	10,000
4.	Extra Nourishment and Attender charges	15,000
5.	Pain and Sufferings	48,000
6.	Social Amenities	48,000
7.	Loss of clothes	1,000
	Total	Rs. 51,57,936

7. Being aggrieved, the appellant/Transport Corporation has filed this Civil Miscellaneous Appeal as an appellant before this Court. Challenging the finding of the tribunal on the question of negligence and also the quantum of compensation. The learned counsel for the appellant/Transport Corporation submitted that the Tribunal ought to have held that the above accident was caused due to the negligence of the respondent/claimant. It was further submitted that the compensation awarded is very much on the higher side and that the Tribunal failed



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to give substantial finding that the functional disability affected the earning capacity of the respondent/claimant.

8.In any event, it is contended that on behalf of the appellant/Transport Corporation that the award of Rs.51,57,936/- is highly an excessive and arbitrary one, based on the facts and circumstances of the case.

9.In response, the learned counsel for the respondent/claimant submits that the Tribunal had taken into account all relevant and positive factors in awarding a just and fair compensation to the respondent/claimant who had sustained 60% disability and prays for dismissal of the Civil Miscellaneous Appeal by this Court.

10.Heard Mr.Murali Vinodh learned counsel appearing for the appellant/Transport Corporation as well as Mr.P.Paramasivadoss learned counsel appearing for the respondent/claimant and perused the materials available on record.

11.Upon consideration of evidence, findings of Tribunal and rival contentions, the following points arise for consideration in this Appeal;



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1. Whether the accident was caused due to the negligence of the respondent/claimant as contented by the appellant/Transport Corporation or caused by the driver of the Corporation bus?
2. Whether the compensation awarded by the Tribunal is just and reasonable ?

Point No.1 – Negligence – In so far as negligence is concerned, the contention of appellant/Transport Corporation is that the accident occurred due to the negligence of the respondent/claimant and that the Tribunal erred in finding that the accident was solely due to the negligent driving of the corporation bus driver. In the counter, even though appellant/Transport Corporation raised the plea that the respondent/claimant was responsible for the accident, the appellant/Transport Corporation failed to adduce any oral or documentary evidence in support of their contention. It is for the party who is alleging negligence, to independently adduce evidence to substantiate the plea of negligence. Absolutely there is no evidence either to substantiate the plea or to rebut the documentary evidence produced by the respondent/claimant. In the absence of any evidence adduced by the appellant/Transport Corporation, the claims Tribunal after



scrutinizing the evidence of P.W.1 coupled with Ex.P.1 FIR registered against the appellant/Transport Corporation bus driver, came to the resultant conclusion that the offending bus driver drove the vehicle bearing Registration No.TN-33-N-2596 in a great speed, rashly and negligently and caused the accident. In our considered view, the Tribunal was right in holding that the driver of the corporation bus was solely responsible for the accident. In the absence of any rebuttal evidence adduced by the appellant/Transport Corporation, we do not find any reason to take a different view from the findings arrived at by the Tribunal. Finding of the Tribunal holding that driver of the corporation bus was negligent and fastening the liability upon the appellant/Transport Corporation is confirmed.

Point No.2 - Quantum of compensation - Coming to the quantum of compensation, Tribunal awarded compensation of Rs.51,57,936/-. In the accident respondent/claimant suffered major crush injury on his left foot and ankle with segmental loss of tibial nerve and aretery in the left ankle and foot region. A well settled anterolateral thigh flap coverage of the left ankle and foot which is evident from Ex.P.13,16,17 &18, Wound Certificate and Discharge summaries. According to the respondent/claimant, he is unable to do his previous work and he is not able



to sit, stand or walk on his own. He was relieved from his company on 31.10.2018 because of his physical fitness and reduction in work competence. The relieving letter issued by the Company was marked as Ex.P.20. The Disability Certificate issued by the Medical Board, Krishnagiri, is marked as Ex.C.1 in which it is assessed that the permanent disability sustained by the respondent/claimant is 60%.

12. In the present case, the injured admittedly was a Software Engineer, aged about 26 years, earning Rs.36,500/- per month. His partial permanent disability is assessed at 60% by the Medical Board, Krishnagiri.

13. On perusal of Ex.P.20 relieving letter, issued by the Company in which the injured was working at the time of the accident, it is seen that he was relieved from his job from 31.10.2018 because of his physical fitness and reduction in work competence. From a perusal of records, Ex.P.1, Exs.P.13 to P.18 namely FIR, Wound Certificate, Medical Bills, Discharge summaries issued by Sparsh Hospital, Bangalore and Ex.C1-Disability Certificate issued by the District Medical Board, Krishnagiri and the photos produced by the respondent/claimant, it is seen that the



respondent/claimant will not be able to pursue his career as before the accident.

Even if he is able to get any other job, the salary is likely to be a pittance. Because of the injury sustained by the claimant/respondent, he is incapacitated to pursue his chosen career. The respondent/claimant also produced materials to show that he is in continuous treatment even after date of discharge from the above hospitals. Therefore, the quantum of damages fixed should be in accordance with the injury, because the injuries sustained by the injured may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. Therefore, in this background, in our considered opinion, a just compensation should necessarily be awarded to the respondent/claimant.

14.It is unfortunate that the respondent/claimant has not filed cross objections. But at the same time, it is not as if this Court is helpless, and this Court can certainly invoke its powers conferred under Order 41 Rule 33 of the Code of Civil Procedure. The only consideration must be that, the compensation awarded should not be inadequate, neither should be unreasonable, excessive nor deficient.



15. We are convinced that this is a fit case, wherein the amount of compensation should be revised upwards and enhanced even in the absence of cross objection by the respondent/claimant.

16. In view of the injuries sustained by the respondent/claimant, we are of the considered view that apart from the compensation awarded by the Tribunal, some more amount can be awarded to the respondent/claimant towards loss of amenities. The total compensation of Rs.51,57,936/- awarded by the Tribunal is enhanced to Rs.52,57,936/- along with interest at the rate of 7.5% per annum.

17. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellant/Transport Corporation shall deposit the enhanced compensation amount, as modified by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondent/claimant is permitted to withdraw the amount modified by this Court by filing appropriate application



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before the Tribunal. No Costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M.,J.) (K.G.T.,J.)

28.02.2023

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To:-

The Motor Accident Claims Tribunal,
(Special Sub Court), Krishnagiri

R.SUBRAMANIAN, J.

and

K.GOVINDARAJAN THILAKAVADI, J.



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