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CMA No. 2280 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2280 of 2023

A. Chinnadurai

... Appellant

Versus

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 7717 of 2015 dated 06.11.2019 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, (Motor Accident Claims Tribunal), Chennai – 600 104.

For Appellant : Mr. P.T. Saleem Fathima.

For Respondent : Mr. M. Murali Vinoth.

J U D G M E N T

The claimant has preferred the instant appeal seeking enhancement of compensation in the award passed by the Tribunal in M.C.O.P. No. 7717 of 2015 dated 06.11.2019.



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2.The claimant/appellant has filed the claim petition stating that on 17.09.2015 at about 10 hrs, while the appellant was riding the Motorcycle from East to West in Pudukottai – Manapparai road, he cut across eastern half of the road and took right turn towards North, at that time, a bus came from South to North direction in the said road ignoring the vehicles that are taking right turn and dashed the appellant as a result of which the appellant sustained grievous injuries.

3.The respondent filed a counter stating that the driver of the bus drove the bus with due care and caution; and that the accident took place only due to the negligence of the deceased who had crossed the National Highway without minding the ongoing vehicles and hence, the respondent corporation is liable to pay compensation; and that in any case, the compensation claimed was excessive and prayed for dismissal of the appeal.

4.The appellant examined PW1 and PW2 and marked Ex.P.1 to Ex.P.11. The respondent examined RW1 and marked Ex.R.1.

5.The Tribunal after taking into consideration the oral and



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documentary evidence held that the appellant was guilty of contributory negligence and apportioned the negligence on the appellant at 60% and directed the respondent to pay 40% of the compensation amount determined by the Tribunal to the appellant.

6.The learned counsel for the appellant submitted that the Tribunal had erroneously fixed 60% contributory negligence on the appellant without any basis; that the compensation awarded by the Tribunal is meagre under all heads and prayed for enhancement.

7.The learned counsel for the respondent, per contra, submitted that the appellant had attempted to cross the National Highway without taking due care and caution and hence, the Tribunal was right in fixing 60% contributory negligence on the appellant; that the prosecution against the driver of the bus ended in acquittal and therefore submitted that there is no reason to interfere with the award of the Tribunal and prayed for dismissal of the appeal.

10.The questions that arise for consideration in the instant appeal



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are;

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(i) Whether the Tribunal was right in fixing 60% contributory negligence on the appellant?

(ii) Whether the compensation awarded by the Tribunal is just and reasonable?

11. As regards the first question, it is seen that the appellant examined himself as PW1 and had stated that the accident took place due to the negligence of RW1, who was the driver of the offending vehicle. However, RW1 had deposed before the Tribunal that he was plying the bus in a National Highway and the appellant crossed the road without any warning and therefore, he was guilty of negligence. It is also seen from Ex.R.1 that the driver of the bus has been acquitted by the Criminal Court. Therefore, the finding of the Tribunal holding that both the appellant and the driver of the bus was guilty of negligence cannot be faulted. However, in the circumstances, this Court is of the view that contributory negligence can be apportioned as 50% on the appellant as the driver of the bus also ought to have been careful. It is also seen from the deposition of PW1 that there were several two wheelers which had crossed the road at that time. Therefore, this Court is of the view that the



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apportionment of negligence can be 50:50.

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12.As regards the quantum, it is seen that the appellant had examined PW2 and marked the disability certificate issued by him as Ex.P.8. PW2 had assessed the disability at 25%. The Tribunal had accepted the said disability certificate and there is no reason to interfere with the said finding. However, the Tribunal had granted Rs.3,000/- per percentage of disability which is low. Since the accident took place in the year 2015, this Court is of the view that Rs.5,000/- can be awarded per percentage of disability. Therefore, the compensation under the head Loss of earning capacity would be Rs.1,25,000/- (25 X 5000). Further, it is seen that the Tribunal had granted Rs.3,000/- towards transport expenses and attender charges which is very meagre. Hence, Rs.10,000/- is awarded towards Transport Expenses and Rs.5,000/- is awarded towards Attender charges in the facts and circumstances of the case. The appellant would also be entitled to Rs.10,000/- towards extra nourishment since no amount has been awarded under the said head. Considering the nature of injuries and the avocation of the appellant, this Court is of the view that due to the fracture of left femur, the appellant could not have pursued his avocation for a period of three months and



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hence, the notional income is fixed at Rs.12,000/- and thus, the compensation under the head loss of income would be Rs.36,000/- (12,000 X 3). The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earning Capacity	75,000	1,25,000	Enhanced
2.	Medical Bills	1,282	1,282	Confirmed
3.	To and fro hospital, attenders help and other miscellaneous expenses	3,000	10,000 5,000	Enhanced
4.	Pain and sufferings	25,000	25,000	Confirmed
5.	Loss of Amenities	25,000	25,000	Confirmed
6.	Extra nourishment	---	10,000	Granted
7.	Loss of income	---	36,000	Granted
	Total	1,29,282 rounded off to 1,29,290	2,37,282 rounded off to 2,37,300	
	After deducting contributory negligence	51,716 rounded off to 51,720 (@ 60%)	1,18,650 (@ 50%)	Enhanced by Rs.66,930/-.

12. With the above modification, this Civil Miscellaneous Appeal is



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partly allowed and the compensation awarded by the Tribunal at Rs.51,720/- is hereby enhanced to Rs.1,18,650/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The respondent is directed to deposit the award amount now determined by this Court along with proportionate interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court fee if any on the enhanced award amount. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

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To

- 1.The Principal Special Judge,
Special Court under E.C. & NDPS Act,
(Motor Accident Claims Tribunal),
Chennai – 600 104.
- 2.The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

C.M.A. No. 2280 of 2023

Dated: 27.09.2023