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C.M.A.Nos.2694 & 2267 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved On : 19.06.2023

Judgement Delivered On : **17.07.2023**

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY

C.M.A.Nos.2694 & 2267 of 2022
and
C.M.P.No.21150 of 2022

In C.M.A.No.2694 of 2022:

The Managing Director,
Tamil Nadu State Transport Corporation (Cbe) Ltd.,
Erode Region.

... Appellant

Versus

1. Karthikeyan
2. Vijayan
3. Yuvamani

... Respondents

In C.M.A.No.2267 of 2022:

Karthikeyan

... Appellant

Versus

1. Vijayan
2. Tamilnadu Transport Corporation, Coimbatore,
having its office at 37, Mettupalayam Road,
Kovai Town, Kovai Taluk,
Coimbatore District.
3. Yuvamani

... Respondents



C.M.A.Nos.2694 & 2267 of 2022

Prayer in C.M.A.No.2694 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgement dated 31.01.2022 made in M.C.O.P.No.581 of 2015, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Bhavani.

Prayer in C.M.A.No.2267 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation awarded by the order and award dated 31.01.2022 made in M.C.O.P.No.581 of 2015, passed by the Learned Motor Accident Claims Tribunal, Subordinate Judge, Bhavani, Erode by Rs.30,00,000/-.

Appearance in C.M.A.No.2694 of 2022:

For Appellant : Mr. M. Murali Vinodh
For Respondents : Mr. J. Titus Enock (for R1)
: No Appearance (for R2 & R3)

Appearance in C.M.A.No.2267 of 2022:

For Appellant : Mr. J. Titus Enock
For Respondents : Mr. M. Murali Vinodh (for R2)
: No Appearance (for R1 & R3)

COMMON JUDGMENT

A. The Appeals:

C.M.A.No.2694 of 2022 is filed by The Managing Director, Tamil Nadu State Transport Corporation (Cbe) Limited, Erode Region, against the Award of the Tribunal, dated 31.01.2022 made in M.C.O.P.No.581 of 2015, aggrieved by the quantum of compensation awarded by the Tribunal



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being a sum of Rs.25,76,916/- and also the fixation of negligence.

Aggrieved by the quantum, the claimant has also filed the C.M.A.No.2267 of 2022 for enhancement. Accordingly, both the appeals are taken up together for disposal by way of this common Judgement.

B. The Submissions:

2. Heard *Mr. M.Murali Vinodh*, learned Counsel appearing on behalf of the Transport Corporation and *Mr. J.Titus Enock*, learned Counsel appearing for the claimant.

3. The learned Counsel appearing on behalf of the Transport Corporation would submit that in this case, a perusal of the motor vehicle inspection report and the rough sketch, it can be seen that the same happened only because of the first respondent/ claimant who rode the two wheeler in a very high speed and rash and negligent manner. In any event, atleast a portion ought to have been deducted from the compensation for the contributory negligence. Secondly, the learned Counsel took exception for the higher quantum of compensation awarded by taking into account the income as Rs.9,595/-. Therefore, he would plead that the award requires interference and the total compensation amount in any event has to be considerably reduced.



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4. Per *contra*, praying to enhance the compensation, the learned Counsel appearing on behalf of the claimant would submit that in this case, considering the nature of injury and the condition of the claimant, the Trial Court ought to have taken the disability of the claimant as 100% disabled, even though, the medical board and the Doctor have recommended only 65% and 80% respectively. He would further submit that towards pain and suffering, only a sum of Rs.40,000/- is awarded and he prayed for a total sum of Rs.5,00,000/-, in this regard. The learned Counsel also submitted that towards transportation, only a sum of Rs.25,000 is awarded and prayed that the same may be enhanced to Rs.1,00,000/-. He would further submit that the claimant would need an Attendant throughout the rest of his life, and therefore, awarding a sum of Rs.10,000/- is on the lower side. Besides, the Tribunal should have also considered the loss of amenities and consortium, as the claimant cannot further lead a normal family life. While calculating the income for the permanent disability, the Tribunal also failed to take into account the future prospects, and therefore, erred in awarding only a sum of Rs.19,57,380/-.

5. We have considered the rival submissions made on either side and perused the material records of the case.



C. Points for Consideration:

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6. Upon consideration, the questions which arise for consideration in these appeals are :

“(i) Whether or not the Tribunal erred in fixing the entire liability on the driver of the bus without deducting any sum for contributory negligence?”

“(ii) Whether the sum of Rs.25,76,916/- is reasonable and correct?”

D. On Point No.(i):

7. It can be seen that on behalf of the petitioner, **P.W.2**, an eye-witness in respect of the accident was examined. The copy of the First Information Report is marked as **Ex.P-1**. The Rough Sketch and Observation Mahazar are marked as **Exs.P-3 and P-4**. The Motor Vehicle Inspection Reports were marked as **Exs.P-5 and P-6**. On consideration thereof, it can be seen that when the deceased was proceeding in his two wheeler, it is the bus which started from the bus stop in a rash and negligent manner and swerved on the right suddenly, which is the sole and proximate cause of the accident. Therefore, the finding of the Tribunal that there is no contributory negligence on the part of the claimant is in order and accordingly this point is answered.



E. On Point No.(ii):

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8. Since both sides have made detailed submissions regarding the quantum of compensation, the quantum of compensation is calculated by this Court as follows:

i) Towards the loss of earnings arising out of the permanent disability, is concerned, it can be seen that the claimant suffered the following injuries:

“....Head Injury-(L) Ganglio capsular haematoma, brain stem contusion. Diffuse cerebral edema. Craniotomy & evacuation of ICH done 2. Post craniotomy status. Craniotomy defect (L) fronto-temporo-parietal region. Herniation of brain through the craniotomy defect. Haemorrhage is seen in (L) lentiform nucleus internal & external capsule with diffuse perilesional oedema, 3. Inability to speak (Motor aphasia), 4. Spastic weakness of right upper and lower limb (Right hemiplegia), 5. Bony cranium defect over left fronto-temporo-parietal region....”

ii) It is seen that his skull bones got damaged and it has to be fixed with artificial skull bones. It is further submitted that he lost his speech and the entire left side of his body had become dysfunctional and without strength. The claimant is totally dependent upon an attendant even for mobility.



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(iii) Under these circumstances, when the petitioner was working as a Technical Assistant in an Engineering College, functionally, he has become 100% disabled, and therefore, he cannot carry on any work whatsoever. Therefore, we hold that the Tribunal erred in calculating the compensation by taking the disability at 80% and it should be 100% disability.

9. Now, calculating the quantum, admittedly, the claimant has duly proved that his salary as Technical Assistant in the Engineering College was Rs.9,595/- per month. The claimant was aged 30 years, and therefore, as per paragraph No.59.4 of the Judgement of the Hon'ble Supreme Court of India, in **National Insurance Company Limited Vs. Pranay Sethi¹**, 40% addition has to be made for future prospects, i.e., Rs.3,838/- (Rs.9,595/- x 40%), therefore, totalling to a sum of Rs.13,433/- (Rs.9,595/- + Rs.3,838/-). The multiplier as per **Sarla Verma & others vs. Delhi Transport Corporation & another²**, is '17'. Therefore, the loss of earnings shall be Rs.13,433 x 12 x 17 = Rs.27,40,332/- . The loss of income is rightly granted as Rs.47,975/-. As far as pain and suffering is concerned, this person has been in the hospital for protracted treatment and repeated surgeries from 24.12.2012 to 06.12.2013, and the Tribunal itself enlisted the repeated surgeries and

¹ 2017-13 SCALE 12

² 2009 (2) TNMAC 1 SC
<https://www.mhc.tn.gov.in/judis>



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treatments undergone by the claimant and that the necessity of future treatment also. Therefore, awarding a sum of Rs.5,00,000/- towards the pain and sufferings and loss of amenities and marital life would be appropriate. The Tribunal has awarded Rs.15,000/- for the additional diet, and a sum of Rs.8,73,037/- towards the medical bills. The medical bills are taken on actual basis after considering the veracity of the bills and therefore, they are admissible. The Tribunal has awarded a sum of Rs.25,000/- towards transportation, considering the fact that the claimant/petitioner has to be transported to the hospital repeatedly, the same is enhanced to Rs.50,000/-. The Tribunal awarded only a sum of Rs.10,000/- towards the attendant charges. But, it can be seen that the claimant requires an attender until this date and also in the future. Therefore, multiplier method has to be adopted while calculating the same. Even taking a sum of Rs. 2,000/- per month, $Rs. 2000 * 12 * 17$ a sum of Rs.4,08,000/- is ordered in respect thereof. Even though a sum of Rs.5,00,000/- is claimed towards future medical treatment, considering the fact that there are no other further surgery to be done, a sum of Rs.1,00,000/- is awarded towards future medical treatment. Thus, the claimant will be entitled for compensation as follows:



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Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Earnings/Disability	Rs.15,65,904/-	Rs.27,40,332/-
Loss of Income	Rs.47,975/-	Rs.47,975/-
Pain and Sufferings, loss of amenities, loss of marital life etc.	Rs.40,000/-	Rs.5,00,000/-
Additional Diet	Rs.15,000/-	Rs.15,000/-
Medical Bills	Rs.8,73,037/-	Rs.8,73,037/-
Transportation	Rs.25,000/-	Rs.50,000/-
Attendant Charges	Rs.10,000/-	Rs.4,08,000/-
Future Medical Treatments	-	Rs.1,00,000/-
Total	Rs.25,76,916/-	Rs.47,34,344/-

F. The Result:

10. C.M.A.No.2694 of 2022 is dismissed and the C.M.A.No.2267 of 2022 is partly allowed, on the following terms:

(i) The compensation awarded by the Tribunal is enhanced to a sum of Rs.47,34,344/-, which shall be payable with further interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(ii) The Transport Corporation is directed to deposit the entire award amount along with interest after deducting the deposit, if any already made, within a period of eight weeks from the date of receipt of the copy of the order;



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(iii) Upon such deposit thereof, the claimant will be entitled to withdraw the entire sum;

(iv) On such deposit, the Tribunal shall directly credit the amount of compensation to the S.B. Account of the claimant through NEFT/RTGS mode, as per the Division Bench decision of this Court in *The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others*³,

(v) The Claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation.

(vi) The claimant will be entitled for the costs in C.M.A.No.2267 of 2022. Consequently, the connected miscellaneous petition is closed.

(J.N.B,J.) (D.B.C, J.)
17.07.2023

Index : Yes
Speaking Order
Neutral citation : Yes

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³ 2016 (2) LW 561: 2016 SCC OnLine Mad 1913
<https://www.mhc.tn.gov.in/judis>



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To

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1. The Motor Accident Claims Tribunal,
Subordinate Court, Bhavani.
2. The Section Officer,
V.R. Section, High Court of Madras.



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**J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY, J.**

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**Pre-Delivery Judgment in
C.M.A.Nos.2694 & 2267 of 2022
and
C.M.P.No.21150 of 2022**

17.07.2023