



CMA Nos. 266 & 623 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 266 & 623 of 2023

Gowri ... Appellant in C.M.A. No. 266 of 2023

Mookaiah ... Appellant in C.M.A. No. 623 of 2023

Versus

The Managing Director,
Metropolitan Transport Corporation,
Chennai – 600 002. ... Respondent in both the
petitions

COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 29.04.2022 made in M.C.O.P. Nos. 2613 & 2617 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellants : Mr. K. Varadhakamaraj.

For Respondent : Mr. M. Murali Vinodh.

COMMON JUDGMENT

These appeals have been filed challenging the common award passed by the Tribunal in M.C.O.P. Nos. 2613 & 2617 of 2018 dated



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29.04.2022. Since both the appeals challenge the very same award, they are taken up together for disposal.

2.The appellants had filed claim petitions before the Tribunal stating that on 25.03.2018, while the appellant in C.M.A. No. 623 of 2023 was riding his motor cycle bearing Registration No. TN 10 BR 0288 along with the appellant in C.M.A. No. 266 of 2023 who was travelling as a pillion rider from Vadapalani to Valasaravakkam on Durai Samy Road, near J R K High School at Vadapalani, a MTC bus belonging to the respondent bearing Registration No. TN 01 AN 1607 coming from the same direction which was driven by its driver in a rash and negligent manner, dashed the backside of the motor cycle, as a result of which the appellants sustained multiple injuries all over the body. Thus, the appellants filed claim petitions seeking compensation.

3.The respondent filed counter denying all the averments made in the claim petitions stating that the accident occurred only due to the rash and negligent riding by the rider of the motorcycle; that when the bus was proceeding in a moderate speed, the motorcyclist along with the pillion rider attempted to overtake other vehicles; that on seeing the same, the driver of the bus turned the bus towards left side; that the



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motorcyclist attempted to overtake in a rash and negligent manner and lost the balance and had hit the bus on its right side, fell down along with the pillion rider and sustained injuries; that both the rider and the pillion rider did not wear helmet at the time of the accident; that the claim petition is bad for non-joinder of the necessary parties; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petitions.

4. The appellants examined three witnesses as PW1 to PW3 on their side and marked Ex.P.1 to Ex.P.19. On the side of the respondent, driver of the bus was examined as RW1 but no exhibit was marked.

5. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent to pay a sum of Rs.2,41,900/- as compensation to the appellant in C.M.A. No. 623 of 2023 and a sum of Rs.1,25,300/- to the appellant in C.M.A. No. 266 of 2023. Aggrieved by the said award, the appellants have preferred the instant appeals.



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6.The learned counsel for the appellant in C.M.A. No. 266 of 2023

submitted that though the appellant produced Ex.P.10, discharge summary to prove the injuries suffered in the accident and Ex.P.16, disability certificate issued by PW3 doctor, the Tribunal without any basis reduced the disability to 5%. The learned counsel submitted that in the absence of any evidence to contradict the same, the Tribunal ought to have accepted the doctor's evidence.

7.Likewise, in C.M.A. No. 623 of 2023, the appellant had produced Ex.P.2 accident register, Ex.P.3, discharge summary, Ex.P.4 and Ex.P.5, X-rays to prove the injuries suffered by him. The appellant had examined PW2, doctor who had assessed the disability at 30%. However, in this case also the Tribunal reduced the disability to 8% without any basis. In both the cases, the learned counsel prayed for enhancement of compensation.

8.Per contra, the learned counsel for the respondent in both the appeals submitted that the appellants in both the appeals did not subject themselves to examination by Medical Board. Hence, the Tribunal was right in not accepting the disability certificate issued by a private doctor.



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Nature of injuries suffered by the appellants would show that the Tribunal had fixed the disability properly and no interference is called for and hence prayed for dismissal of the appeals.

9.The only question that arise for consideration in both the appeals is whether the compensation awarded by the Tribunal is just and reasonable.

10.In C.M.A. No. 266 of 2023, the appellant had produced Ex.P.10, discharge summary. The discharge summary reveals that the appellant suffered the following injuries; *“Traumatic Head Injury with Concussion Brain with Right Higher Parietal Scalp Hematoma and DM”*. Admittedly, the appellant did not subject herself to examination by Medical Board. PW3 is a private doctor who had assessed the disability at 20%. Nothing was elicited in the cross examination to discredit his evidence except for stating that there cannot be any accurate assessment for disability and there can be some variations. Considering the nature of injuries mentioned above and the evidence of PW3, this Court is of the view that it would be just and reasonable to fix the percentage of



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disability at 15%. The appellant is entitled to Rs.5,000/- per percentage of disability. Hence, the award under the head disability is enhanced from Rs.25,000 to Rs.75,000/-. Further, the award of Rs.4,000/- towards transportation is meagre and the same is enhanced to Rs.10,000/-. The award under the other heads are just and reasonable 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.	Disability	25,000	75,000	Enhanced
2.	Pain and sufferings	25,000	25,000	Confirmed
3.	Transportation	4,000	10,000	Enhanced
4.	Medical Expenses	38,378	38,378	Confirmed
5.	Extra nourishment	10,000	10,000	Confirmed
6.	Attender Charges	900	900	Confirmed
7.	Loss of earnings	22,000	22,000	Confirmed
	Total	1,25,278 rounded off to 1,25,300	1,81,278 rounded off to 1,81,300	Enhanced by Rs.56,000/-

11. Likewise, in C.M.A. No. 623 of 2023, the appellant had marked Ex.P.2, accident register, Ex.P.3, Discharge summary issued by the hospital and Ex.P.4 and Ex.P.5, X-rays to prove the injuries suffered by the appellant. The appellant suffered the following injuries; “*Traumatic*



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Head Injury - Concussion Brain, Fracture Distal Radius Right Side, DM,

Dyslipidemia and HTN". The appellant also examined PW2, doctor in support of his claim. The doctor assessed the disability at 35%. However, the Tribunal had reduced the percentage of disability to 8%. Considering the nature of injuries and the evidence of PW2, this Court is of the view that it would be just and reasonable to fix the disability at 25%. The appellant is entitled to Rs.5,000/- per percentage of disability. Hence, the award under the disability is enhanced from Rs.40,000/- to Rs.1,25,000/-. Further, the award of Rs.4,000/- towards transportation is meagre and the same is enhanced to Rs.10,000/-. The award under the other heads are just and reasonable 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.	Disability	40,000	1,25,000	Enhanced
2.	Pain and sufferings	30,000	30,000	Confirmed
3.	Transportation	4,000	10,000	Enhanced
4.	Medical Expenses	1,33,746	1,33,746	Confirmed
5.	Extra nourishment	10,000	10,000	Confirmed
6.	Attender Charges	2,100	2,100	Confirmed
7.	Loss of earnings	22,000	22,000	Confirmed



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Total	2,41,846 rounded off to 2,41,900	3,32,846 rounded off to 3,32,900	Enhanced by Rs.91,000/-
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12. With the above modifications, C.M.A. No. 266 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.1,25,300/- is hereby enhanced to Rs.1,81,300/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

13.C.M.A. No. 623 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.2,41,900/- is hereby enhanced to Rs.3,32,900/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

14.The respondent is directed to deposit the award amounts now determined by this Court along with 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 appellants in both the appeals are permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already



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withdrawn. The appellants in both the appeals are directed to pay necessary Court fee, if any on the enhanced compensation. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
Special Sub Court No.1,
Small Causes Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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