



C.M.A.No.2396 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2023

PRONOUNCED ON : 10.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

C.M.A.No.2396 of 2018

Murugan

...Appellant

Vs.

The Managing Director,
Tamilnadu State Transport Corporation,
Thiruvannamalai Region.

...Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decretal order dated 18.01.2016 made in M.A.C.T.O.P.No.256 of 2013 by the learned Special Motor Accident Claims Tribunal, Thiruvannamalai.

For Appellant : No Appearance

For Respondents : S.S.Santhosakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded by the Tribunal.



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The appellant is claimant, who filed the claim petition claiming compensation of Rs.10,00,000/- for the injuries sustained by him in the accident that occurred on 29.02.2012. According to the appellant/claimant on 29.02.2012, when he was riding his two wheeler, bearing Reg.No.TN 25 L near Varagur Village, Thirivannamalai - Kallakurich Road, the driver of the Bus belongs to the respondent/Transport Corporation, coming from opposite side, drove the vehicle in a rash and negligent manner and caused accident, in which the appellant/claimant sustained grievous injuries.

3 The claim petition was contested by the respondent/Transport Corporation and they filed detailed counter denying all the allegations apart from disputing the liability.

4 Before the claims Tribunal, On the side of the appellant/claimant, P.Ws.1 and 2 were examined and Exs.P1 to P12 were marked. On the side of the respondent/Transport Corporation, Driver of the Bus was examined as R.W.1 and no document was marked.



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The Tribunal, on an assessment of the entire evidence on record, fixed the liability on the respondent/Transport Corporation and awarded a sum of Rs.1,91,000/- as compensation along with interest at 7.5%. Being not satisfied with the award amount, the claimant is before this Court with the present appeal.

6 According to the appellant/claimant, even though the Tribunal accepted the accident and the injuries sustained, but, the award does not reflects just and reasonable compensation. The appellant was working as Mason and earning a sum of Rs.10,000/- p.m. and due to the accident he could not continue his work as he was doing prior to the accident. The claimant sustained Grade-I compound fracture both bone right leg whereby external fixation was fixed SSG done, injury over the forehead, right eye contusion, laceration over the right leg, fracture over the zygomatic complex, subluxation of zygomatic complex and other multiple grievous injuries all over the body. Fibula fracture reduced and 2 KO wire fixed, tibia fracture stabilized with ankle spans external fixation was fixed.



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6.1 Further soon after the accident, the claimant was taken to Government Hospital, Thiruvannamalai, and thereafter admitted in the Government General Hospital, Chennai, till 21.04.2012 and again admitted as outpatient on 20.06.2012 and thereafter again admitted as inpatient from 22.08.2012 to 10.09.2012. The claimant again admitted in a private Hospital at Triplicane from 10.10.2012 to 24.10.2012 and thereafter continuing treatment as outpatient in the same hospitals. Hence the appellant/claimant has completely lost his earning capacity due to the injuries and disabilities sustained in the accident. The Tribunal failed to consider the disability and awarded a sum of Rs.90,000/- towards compensation under the head of permanent disability, which is very meagre.

6.2 The Doctor had assessed the disability as 45% permanent disability and the Tribunal instead of adopting multiplier method, fixed Rs.2,000/-per percentage, which is erroneous. The Tribunal failed to consider the period of hospitalisation and awarded meagre amount of Rs.46,000/- towards Medical expenses and Transportation Charges.



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6.3 It is further case of the appellant/claimant that since the appellant/claimant sustained grievous injuries all over the body and fracture at both bone right leg, he could not have taken treatment without attender and no amount has been granted towards attender charges. The compensation awarded under the other heads are also very meagre and the same has to be enhanced.

7 Learned counsel appearing for the respondent/Transport Corporation would submit that the accident had not occurred due to the rash and negligent driving of the driver of the Bus. The appellant/claimant while overtaking the Tractor, he himself caused accident and hence he is a tortfeasor and he is not entitled to get compensation. Further the appellant/claimant did not possess valid driving licence at the time of accident. The appellant/claimant did not implead the insurance company of the Two wheeler. The Tribunal has failed to fix contributory negligence and erroneously foisted the liability solely on the respondent/Transport Corporation, which warrants interference of this Court.



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WEB COPY 8 Heard the learned counsel appearing for the respondent/Transport Corporation and perused the materials available on record.

9 According to the appellant/claimant, the accident had occurred due to rash and negligence driving of the Driver of the Bus belongs to the respondent/Transport Corporation and hence the case in Cr.No.64 of 2012 was also registered against the Driver of the offending vehicle. P.W.1 has clearly deposed that while he was riding his two wheeler observing the traffic rules keeping left side of the road, the Bus bearing Reg.No.TN 32 N 3269 belongs to the respondent/Transport Corporation driven by its Driver in a rash and negligent manner and dashed against the Two Wheeler and caused the accident. P.W.2 the Doctor, who examined the appellant/claimant has assessed the disability as 45% permanent disability and issued disability certificate Ex.P11. The appellant/claimant also taken treatment for a long period in the Government Hospital as well as in the Private Hospital and in order to prove the same Exs.P2 to P10 and P12 were marked on the side of



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the appellant/claimant.

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10 Even though the respondent/Transport Corporation examined R.W.1, who deposed that complaint has been lodged against the appellant/claimant, there is no documentary evidence to prove the same. Therefore the Tribunal rightly arrived at a conclusion that the accident had occurred only due to the rash and negligent driving of the offending vehicle. Even though manner of the accident and liability has been denied by the respondent/Insurance Company, P.W.1, who is the injured and eye witness has clearly deposed that while he was riding his two wheeler on the left side of the road observing traffic rules, the Driver of the Bus belongs to respondent/Transport Corporation, drove the vehicle in a rash and negligent manner and hit against the two wheeler, in which the appellant sustained grievous injuries and a case was also registered against the Driver of the Bus. R.W.1 the Driver of the Bus has also admitted the same during evidence. Therefore from the evidence of P.W.1 and R.W.1, the Tribunal has held that the accident had occurred only due to the rash and negligent driving of the driver of the Bus belongs to the respondent/Transport



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11 This Court, as a final Court of fact finding, while re-appreciating entire evidence finds that the Tribunal has rightly come to the conclusion that the accident had occurred only due to rash and negligent driving of the appellant. It is true that mere FIR or criminal case will not be a sole ground to foist liability, however, in this case, there is no contra evidence to disprove the evidence of the appellant/claimant/P.W.1. R.W.1 neither examined the conductor of the Bus nor examined any of the passenger or any independent witness to prove his version and mere denial would not suffice.

12 As far as quantum of compensation is concerned the appellant/claimant claimed that he was earning Rs.10,000/- by working as Mason. But, there was no concrete proof for the same and the Tribunal did not award any amount towards loss of income. Since the appellant/claimant suffered grievous injuries and taken treatment for more than 10 months, he could not have gone for work and earn money atleast for one year. But, the



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appellant/claimant did not produce any proof for the income. Therefore, considering the nature of injuries and treatment period this Court is inclined to fix notional income of the appellant/claimant at Rs.6,000/- p.m.

13 Further, considering the evidence of P.W.1 the claimant and P.W.2 the Doctor and the documentary evidence Exs.P2 to P8, P11 and P12, this Court fix Rs.3,000/- per percentage instead of Rs.2000/-. Since the appellant/claimant sustained grievous injuries all over the body and sustained Grade – 1 compound both bone right leg whereby external fixation was fixed SSG done and fracture over the Zygomatic complex, subluxation of zygomatic complex and other multiple grievous injuries all over the body, he could not have taken treatment without attender. But the Tribunal did not grant any amount towards attender charges. Therefore this Court is inclined to grant Rs.3,000/- per month for three months towards attender charges.



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WEB COPY 14 Accordingly, the Award of the Tribunal under various heads is modified as follows.

<i>Sl. No .</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Permanent Disability (45%)	90,000.00	1,35,000.00
2.	Attender Charges (3 x 3000)	-	9000.00
3.	Loss of earnings (Rs.6000 x 12)	-	72,000.00
4.	Transportation and Medical expenses	46,000.00	46,000.00
5.	Pain and suffering	35,000.00	35,000.00
6.	Extra Nourishment	10,000.00	10,000.00
7.	Damages to the Vehicle	10,000.00	10,000.00
TOTAL COMPENSATION		1,91,000.00	3,17,000.00

15 The appellant/claimant is therefore entitled to enhanced



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compensation of Rs.3,17,000/- along with 7.5% interest from the date of claim petition till the date of realisation. The respondent is directed to deposit the enhanced compensation along with 7.5% interest, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to pay the same directly to the account of the appellant/claimant as per the decision of the Division Bench of this Court reported in *2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others)*. Accordingly the appeal is partly allowed. There shall be no order as to costs.

10.11.2023

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Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Special Motor Accident Claims Tribunal, Thiruvannamalai.
2. The Section Officer, V.R.Section, High Court, Madras.

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P.VELMURUGAN. J.,

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Pre-Delivery Judgment in

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