



C.M.A.No.3473 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3473 of 2019

Srinivasan

...Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Vellore – 9.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 14.06.2012 made in M.C.O.P.No.303 of 2010 on the file of the Motor Accident Claims Tribunal and Subordinate Judge, Vaniyambadi.

For Appellant : Ms.A.Subadra

For Respondent : Mr.S.S.Santhosakumar

JUDGEMENT

Aggrieved by the Judgement and Decree passed by the Motor Accident Claims Tribunal and Subordinate Judge, Vaniyambadi in M.C.O.P.No.303 of 2010 dated 14.06.2012, the claimant has come up with this Appeal.



C.M.A.No.3473 of 2019

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2. The case of the appellant is that on 16.10.2010 at about 7.00 am, when the appellant was riding a two wheeler bearing Regn.No.TN-37-Y-0167, the respondent corporation bus bearing Regn.No.TN-23-N-1262 driven by its driver in a rash and negligent manner dashed against the appellant, as a result of which, the appellant sustained grievous injuries all over his body and got admitted in the hospital. Thereby, the appellant filed a claim petition claiming a compensation of Rs.10,00,000/-. After contest, the tribunal. vide impugned judgment awarded a compensation of Rs.53,600/-, after deducting 50% from the compensation of Rs.1,07,161/- arrived at by the tribunal, for the contributory negligence of 50% on the part of the appellant. Aggrieved with the said order, the claimant has come up with this appeal.

3. Learned counsel for the appellant submitted that, the above said accident occurred solely due to the rash and negligent driving of the driver of the respondent corporation bus, for which, the FIR came to be registered as against him. Further at the time of accident, the appellant was aged about 26 years and was employed in Army at 155 MED Regiment and was earning a sum of about Rs.14,000/- per month and due



C.M.A.No.3473 of 2019

WEB COPY

to the injuries sustained by him at the time of the above said accident, the appellant sustained 50% disability and is unable to continue his avocation which he was carrying on before the accident and due to which, his earning capacity got reduced and the tribunal ought to have adopted multiplier method instead of percentage method. Even if it is presumed without admitting that the adoption of percentage method by the tribunal for awarding compensation under the head Loss of income is correct, as the accident is of the year 2011, as per the existing law at the relevant point of time, a sum of Rs.3,000/- has to be adopted per percentage of disability, however, the tribunal had adopted Rs.2,000/- per percentage which is erroneous and though the appellant sustained 50% disability, however, the tribunal had fixed the disability at the rate of 20% which cannot be acceded to and the same has to necessarily be enhanced. Further, when the FIR, marked as Ex.P1 clearly shows that the negligence is on the part of the driver of the respondent corporation bus, if really the driver of the respondent corporation bus was not the aggressor driving the offending vehicle, definitely the respondent corporation would have resisted the case by submitting requisite evidence to get itself exonerated from the said case or it would have



C.M.A.No.3473 of 2019

WEB COPY

challenged the said FIR in the manner known to law, however, the same was not done so by the respondent, which clearly shows that, the accident had happened due to the rash and negligent driving by the driver of the respondent corporation bus. While so, without properly appreciating the said fact, the tribunal had fixed 50% negligence on the part of the claimant on the ground that, the appellant did not possess valid driving licence at the time of accident, which is erroneous and the same requires interference of this Court. Further, the compensation awarded by the tribunal under the other heads are also on the lower side. Accordingly, he prayed for appropriate enhancement in favour of the appellant.

4. Per contra, the learned counsel for the respondent submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any interference of this Court. Accordingly, he prayed for dismissal of this appeal.

5. Heard learned counsel for the appellant as well as the respondent and perused the materials available on record.



C.M.A.No.3473 of 2019

WEB COPY

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/claimant is with regard to the quantum of compensation awarded and the negligence fixed by the tribunal. It is claimed by the appellant that due to the injuries sustained by him in the above said accident, the appellant sustained functional disability of 50% for which, the tribunal failed to award compensation by adopting multiplier method and for mere non-possession of driving licence, the tribunal fixed 50% negligence on the part of the appellant, which is not sustainable.

7. It is claimed by the appellant that the accident occurred due to the rash and negligent driving of the driver of the respondent bus and only for which the FIR came to be registered as against the driver of the respondent bus. However, except the FIR, no other documentary evidence was produced by the appellant to show that the entire negligence is on the part of the driver of the respondent bus. On the other hand, when it is the stand of the respondent that the claimant was not in possessing of a valid driving licence, it is the duty cast upon the claimant



C.M.A.No.3473 of 2019

to disprove the said stand of the respondent by producing his driving licence before the tribunal. Since the appellant did not produce his driving license before the tribunal, the Tribunal had rightly arrived a conclusion that the appellant did not possess a valid licence and thereby, fixed 50% negligence on the part of the appellant for not holding valid driving license and 50% negligence on the part of the driver of the respondent corporation bus, in which this Court does not find any fault with and is not inclined to interfere with the same.

8. Though the learned counsel for the appellant claim that the disability of 50% sustained by the appellant is functional in nature and that non-adoption of multiplier method by the tribunal is erroneous, however, the said contention cannot be accepted for the reason that, the extent of the disability sustained by the appellant would not really hamper the claimant from discharging his work.

9. Further, it is to be pointed out that the percentage of disability varies from doctor to doctor. Hence, considering the Disability certificate, Ex.P8 and also taking into account the age of the appellant



C.M.A.No.3473 of 2019

WEB COPY

and the nature of injuries suffered by him, this Court fixes the disability sustained by the respondent at the rate of 40%. As rightly pointed out by the learned counsel for the appellant, the accident is of the year 2011 and as per the existing law at the relevant point of time, a sum of Rs.3,000/- has to be adopted per percentage of disability, however, the tribunal had adopted Rs.2,000/- per percentage, which necessarily requires interference of this Court. Therefore, the amount under the head of Loss of Income stands modified to a sum of Rs.1,20,000/- ($\text{Rs.3,000/-} \times 40 = \text{Rs.1,20,000/-}$). Further, the Tribunal has awarded a sum of Rs.10,000/- towards compensation for Pain and suffering which is on lower side and the same requires to be interfered with.

10. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the award of compensation under the said heads.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



C.M.A.No.3473 of 2019

WEB COPY

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of Income	40,000/-	1,20,000/- (enhanced)
Pain and suffering	10,000/-	40,000/- (enhanced)
Medical expenses	50,411/-	50,411/-
Transportation charges	6,750/-	6,750/-
Total	Rs.1,07,161/-	Rs.2,17,161/-

12. After reducing 50% for the negligence fixed on the part of the appellant/claimant from the arrived compensation i.e., Rs.2,17,161/-, the compensation payable to the appellant by the respondent comes to **Rs.1,08,580/-**.

13. With the above observations, the appeal stands allowed in part and the impugned award passed by the tribunal stands modified by enhancing the compensation from **Rs.53,600/- to Rs.1,08,580/-**. The respondent-transport corporation is directed to deposit the above compensation awarded by this Court to the credit of M.C.O.P.No.303 of 2010 along with interest at the rate of 7.5% per annum from the date of



C.M.A.No.3473 of 2019

claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter, upon production of necessary proof for payment of court fee for the enhanced compensation by the appellant. No costs.

23.11.2023

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

- 1.The Motor Accident Claims Tribunal and Subordinate Judge,
Vaniyambadi.
- 2.The Section Officer,
V.R.Section, High Court,
Madras.



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C.M.A.No.3473 of 2019

M.DHANDAPANI, J.

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C.M.A.No.3473 of 2019

23.11.2023