



C.M.A.(MD)No.458 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 25.01.2023

Delivered On : 16.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.458 of 2012

Lakshmanan

... Appellant /claimant

Vs.

1. The Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Bye-pass Road, Madurai.

2.Kokila Devi

3.Bajaj Alliance General Insurance Co. Ltd.,
through its Branch Manager,
No.25/26, Prince Towers,
4th Floor, College Road,
Chennai – 625 001.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and to enhance the award amount in M.C.O.P.No.242 of 2009, on the file of the Motor Accident Claims Tribunal - Principal Sub Court, Tirunelveli, dated 11.03.2011.



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For Appellant : Mr.T.Selvakumaran
For Respondents : Mr.P.Prabhakaran for R1
: Mr.J.S.Murali for R3
: R2 dismissed,vide, Court order dated 28.07.2022

JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the award amount in M.C.O.P.No.242 of 2009, on the file of the Motor Accident Claims Tribunal - Principal Sub Court, Tirunelveli, dated 11.03.2011. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.242 of 2009, is as follows:-

On 05.05.2009, when the petitioner was travelling in a bus bearing Registration No.TN-58-N-1191, the driver of the bus drove the vehicle in a rash and negligent manner and dashed against a mini lorry bearing Registration No. TN – 59 - AA - 9784, which was parked on the Tharroad without any parking light. The petitioner sustained injuries and fractures on both the legs. He was taken to Government Rajaji Hospital, Madurai and he was admitted as inpatient.



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He undergone surgery and steel plates were implanted. The petitioner claim a sum of Rs.10,00,000/- as compensation.

3. A Brief substance of the counter filed by the first respondent, in M.C.O.P.No.242 of 2009, is as follows:

The accident has happened only due to the negligent act of the driver of the mini lorry. The age, income and injuries are to be proved. The claim is excessive.

4. A Brief substance of the counter filed by the third respondent, in M.C.O.P.No.242 of 2009, is as follows:

When the mini lorry was not insured with the third respondent, the driver of the lorry was not having valid driving licence. The accident did not happen due to the rash and negligent of the second respondent. Criminal case was registered only against the first respondent driver. The lorry was parked with the parking lights. The nature of injury as stated in the petition is wrong. The claim is baseless and the claim petition is to be dismissed.

5. Two (2) witnesses were examined and 16 documents were marked, on the side of the claimant. No witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a



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sum of Rs.1,31,562/- as compensation to be paid by the first respondent with interest at the rate of 9% p.a..

6. Against the order, the claimant / appellant has filed this appeal on the following grounds:-

The Tribunal granted Rs.10,000/- towards pain and sufferings and the same is to be enhanced to Rs.50,000/-. The claimant is a borewell lorry driver and hence, functional disability should be fixed as 100% and multiplier method ought to have been adopted. The Tribunal ought to have awarded separate compensation for loss of income and for permanent disability. The Tribunal ought to have awarded compensation for loss of amenities and loss of expectation of life.

7. On the side of the appellant, it is stated that the respondents side has not examined any witness and failed to mark any document. The respondents have not chosen to file any appeal and the liability fixed by the Tribunal is to be confirmed.

8. On the side of the first respondent – Transport Corporation, it is stated that in the evidence of P.W.1 and even in the claim petition, it was stated that there was no negligence on the side of the driver of the Corporation bus. It was the mini lorry that was parked on the middle of the road, without the parking lights. There



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was no evidence on the side of the lorry owner or on the side of the Insurance company. The Transport corporation is not liable to pay compensation.

9. Copy of F.I.R was marked as Ex.P1. Copy of the observation mahazer was marked as Ex.P2. Copy of the charge sheet was marked as Ex.P3. Copy of the M.V.I. report was marked as Ex.P4. Based on the evidence of P.W.1 and on the basis of Ex.P1 to P4, the Tribunal fixed the negligence on the driver of the first respondent. There is no appeal or cross objection by the first respondent. For the above said reasons, it is decided that the negligence fixed by the Tribunal is reasonable.

10. On the side of the appellant, it is stated that the claimant sustained fractures in both the legs. Wound certificate was marked as Ex.P5. Discharge summary issued by the Government Rajaji Hospital, Madurai, was marked as Ex.P10. Discharge summary issued by Devi Hospital was marked as Ex.P11. O.P sheet issued by Tirunelveli Government Medical College Hospital was marked as Ex.P13. Disability certificate was marked Ex.P14. X-Ray was marked as Ex.P15. P.W.2 has deposed that the claimant sustained 50% disability.



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11. On the side of the appellant, it is stated that though the Doctor fixed the disability at 50%, the Tribunal ought to have fixed the functional disability at 100%. A judgment of this Court reported in **2013-1-TNMAC-47 (DB) (New India Assurance Co.Ltd V. E.Ponnurangam)** is cited.

12. P.W.2 has deposed that the claimant has sustained fractures in both the legs and that he fixed the disability at 50%. Disability certificate was marked as Ex.P14. P.W.2 did not depose anything regarding the functional disability of the claimant. In the above circumstances, it is decided that the disability (50%) fixed by the Tribunal is reasonable.

13. On the side of the appellant, it is stated that the Tribunal ought to have awarded compensation separately for the disability and for loss of income. The Tribunal has awarded Rs.1,00,000/- towards 50% disability. The appellant claimed that the loss of income ought to have been calculated by applying multiplier method.

14. Since there is no functional disability, it is decided that the appellant is entitled to Rs.3,000/- per percentage of disability. Hence it is decided that the claimant is entitled to Rs.1,50,000/- (Rs.3,000/- X 50) for 50% partial permanent



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disability. The Tribunal fixed the monthly income as Rs.3,000/- per month and has awarded Rs.12,000/- towards loss of income for a period of four months. It is seen that the claimant has undergone 2 surgeries and he was taking treatment as inpatient. For the period of treatment and for the period of rehabilitation, the appellant is entitled to temporary loss of income for a period of six months. On the side of the appellant, it is stated that the monthly income of the appellant is Rs.10,000/-, but, the Tribunal has fixed the monthly income only as Rs.3,000/-. There is no record to show the income of the claimant. Considering the date of accident, notional income is fixed as Rs.9,000/-. For the period of six months, the claimant is entitled to Rs. 54,000/- (Rs.9,000/- X 6) as compensation towards interim loss of income.

15. On the side of the appellant, it is stated that the appellant took treatment as inpatient for a period of ten days. The Tribunal awarded only Rs.2,000/- towards transport expenses and the same is to be enhanced to Rs.10,000/-. On the side of the respondents, it is stated that the accident has taken place along the Madurai – Dindigul road and the claimant took treatment only in Madurai Rajaji Government Hospital and there is no necessity to award more amount towards transport expenses.



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16. By way of reply, on the side of the appellant, it is stated that the appellant is a resident of Tirunelveli and hence the transport expenses is to be enhanced. Considering the date of accident and considering the fact that the appellant was a resident of Tirunelveli a sum of Rs.5,000/- is awarded towards transport expenses.

17. On the side of the appellant, it is stated that the Tribunal has awarded Rs.3,000/- towards extra nourishment and the same is to be enhanced to Rs.5,000/-. Considering the nature of injury, the amount towards extra nourishment is enhanced to Rs.5,000/-. The Tribunal has awarded Rs.2,000/- towards mental agony and the same is enhanced to Rs.5,000/-.

18. The Tribunal has awarded Rs.10,000/- towards pain and sufferings and Rs.2,562/- for medical expenses, which are all reasonable.

19. The total compensation is calculated as follows:-

For 50% Disability	:	Rs. 1,50,000/-
Transport expenses	:	Rs. 5,000/-
Pain and sufferings	:	Rs. 10,000/-



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Medical expenses	:	Rs. 2,562/-
Interim loss of income	:	Rs. 54,000/-
Mental agony	:	Rs. 5,000/-
Extra nourishment	:	Rs. 5,000/-
Total compensation	:	 Rs. 2,31,562/-

20. It is seen that the Tribunal has fixed the rate of interest as 9%, which is exorbitant. Hence, **the interest is to be reduced to 7.5%.**

21. This Appeal is **partly allowed. The compensation is enhanced from Rs.1,31,562/- to Rs.2,31,562/-.**

(i) The claimant is entitled to Rs.2,31,562/-, as compensation.

(ii) The first respondent herein - Transport Corporation, is directed to deposit the entire compensation of **Rs.2,31,562/-** (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the Transport Corporation, the appellant / claimant is permitted to withdraw the entire award amount with accrued interest and costs on filing of proper petition before the Tribunal, less any amount, if



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already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

16.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accident Claims Tribunal -
Principal Sub Court,
Tirunelveli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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