



C.M.A.(MD)No.1577 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 10.02.2023

Delivered On : 01.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1577 of 2013

A. Rajkumar

.. Appellant /claimant

Vs.

Tamil Nadu State Transport Corporation Ltd.,

Represented by its Managing Director,

Kumbakonam Division – II,

Periyamilaguparai, Trichy.

.. Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 12.10.2009, made in M.C.O.P.No. 825 of 2006, on the file of the Motor Accident Claims Tribunal - II Additional Sub Court, Trichy.

For Appellant

: Mr.B.Prasanna Vinoth

For Respondent

: Mr.M.Prakash



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 12.10.2009, made in M.C.O.P.No. 825 of 2006, on the file of the Motor Accident Claims Tribunal - II Additional Sub Court, Trichy. The appellant herein is the claimant and the respondent herein is the respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No. 825 of 2006, is as follows:-

On 09.12.2005, at about 11.45 pm., when the petitioner was travelling in a bus bearing Registration No.TN-45-N-1803, the driver of the bus drove the vehicle in a rash and negligent manner and applied sudden brake and the petitioner and other passengers sustained injuries. The petitioner claim a sum of Rs.8,00,000/- as compensation.

3. A Brief substance of the counter filed by the respondent, in M.C.O.P. No. 825 of 2006, is as follows:

The petitioner was travelling in a standing position, the bus was driven in a slow and cautious manner. It was the petitioner, who failed to hold the rails or the



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hand bar of the bus in a proper manner. When the bus crossed a hump in the road, the petitioner, who travelled without holding hand bar, fell down and he sustained injuries. The nature of injuries and the treatment particulars are all denied. The claim is excessive.

4. Two witnesses were examined and 9 documents were marked, on the side of the claimant. 1 witness was examined and 1 document was marked, on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.2,28,169/- as compensation.

5. Against the order, the claimant / appellant has filed this appeal, for enhanced of compensation, on the following grounds:-

The Tribunal awarded a meagre amount, without considering the material evidence on record. The petitioner sustained fracture on the spinal cord and on both the legs. The Tribunal failed to consider the discharge summary.

6. On the side of the appellant, it is stated that it was the bus driver, who was rash and negligent and he applied sudden brake, thereby, he caused the accident.



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7. On the side of the respondent, it is stated that the occurrence has happened in night time, when the bus was crossing a hump in the road, the claimant failed to hold the hand bar and he invited the accident. The driver of the bus was acquitted by the criminal Court. Copy of the judgment was marked as Ex.R1.

8. Copy of the F.I.R was marked as Ex.P1. No independent witness was examined on the side of the respondent. R.W.1 is the driver of the vehicle. Criminal records need not be considered by the Tribunal. On the basis of the evidence of P.W.1, the Tribunal has decided that the driver of the bus was rash and negligent and he was responsible for the accident. No cross objection or cross appeal was filed by the respondent. Hence, it is decided that the driver of the bus was responsible for the accident.

9. On the side of the appellant, it is stated that the appellant sustained grievous injury on the spinal cord, rib bones and legs and the disability is 56%. The petitioner is not able to squat or sit for a long time. He has spend more than 1 ½ Lakhs towards medical expenses.



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10. On the side of the respondent, it is stated that the petitioner is a Government Servant, working as an Office Assistant in the office of Deputy Director, Town and Country Planning, Trichy and he was earning Rs.7,000/- per month. There is no loss of income. The award is excessive.

11. On the side of the appellant, it is stated that P.W.2- Doctor has deposed that the appellant has sustained 56% disability. Wound certificate was marked as Ex.P2. Discharge summary was marked as Ex.P3. Photo with negative was marked as Ex.P7. Disability certificate was marked as Ex.P8. X-ray was marked as Ex.P9. P.W.2 has deposed that the fracture in the elbow bone and the spinal cord was rectified and he has deposed that if physiotherapy is taken there is possibility for the disability to reduce upto 2 to 3%. Hence, the Tribunal has fixed the disability at 53%. Considering the date of accident, it is decided that the appellant is entitled to Rs.2,000/- per percentage of disability and hence, it is decided that the appellant is entitled to Rs.1,06,000/- (Rs.2,000/- X 53) as compensation for 53% disability.

12. On the side of the appellant, it is stated that the award towards the medical expenses is very low. Medical bills are marked as Ex.P5 and Ex.P6. Considering the same, the Tribunal has awarded Rs.1,52,169/- as medical expenses



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and the same is rounded off to Rs.1,52,500/-. The tribunal awarded Rs.10,000/- towards pain and sufferings, Rs.5,000/- towards mental agony, Rs.5,000/- towards extra nourishment, which are all reasonable.

13. The Tribunal awarded Rs.3,000/- towards transport expenses and the same is enhanced to Rs.5,000/-. Since the appellant is a Government Servant, there is no question of loss of income.

14. The total compensation is calculated as follows:-

For 53% Disability	:	Rs. 1,06,000/-
Medical expenses	:	Rs. 1,52,500/-
Pain and sufferings	:	Rs. 10,000/-
Extra nourishment	:	Rs. 5,000/-
Transport expenses	:	Rs. 5,000/-
Mental agony	:	Rs. 5,000/-
Total compensation	:	 Rs. 2,83,500/-

15. This Appeal is partly allowed. The compensation is enhanced from Rs.2,28,169/- to Rs.2,83,500/-.

(i) The claimant / appellant is entitled to Rs.2,83,500/ as compensation.



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(ii) The respondent herein - Transport Corporation, is directed to deposit the entire compensation of Rs.2,83,500/(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 interest and costs, on the filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

01.03.2023

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

1.The Motor Accident Claims Tribunal -

II Additional Sub Court, Trichy.

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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01.03.2023