



CMA(MD).Nos.5 of 2013 & 349 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 27.03.2023

PRONOUNCED ON : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.5 of 2013 and 349 of 2015

CMA(MD).No. 5 of 2013:

A.Seeni

...Appellant

Vs.

1.Tamilnadu State Transport Corporation Limited
Through its Managing Director
Dindigul

2.Tamilnadu State Transport Corporation Limited
Through its Managing Director
Bye-pass Road
Madurai

....Respondents

CMA(MD).No. 349 of 2015

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Dindigul

...Appellant



CMA(MD).Nos.5 of 2013 & 349 of 2015

VS.

1.A.Seeni

2.The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Bye-Pass Road, Madurai

...Respondents

(2nd respondent-exparte in the Tribunal -given up)

PRAYER in CMA(MD).No.5 of 2013:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to modify the judgment and decree dated 19.06.2009 made in MCOP.No.1365 of 2003 on the file of the Motor Accident Claims Tribunal /Additional District Court/Fast Tract Court No.II, Madurai by allowing this appeal.

PRAYER in CMA(MD).No.349 of 2015:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree passed in MCOP.No.1365 of 2003 dated 19th day of June 2009 on the file of the Motor Accident Claims Tribunal /Additional District Court Cum Fast Tract Court No.II, Madurai.

For Appellant : Mr.R.Suriya Narayanan
appellant in CMA.No.5 of 2013
&1st Respondent in CMA.No.349 of 2015

For Respondents : Mr.M.Prakash for R1 and appellant
in CMA.No.349 of 2015.



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: No appearance for R2 in both the appeals.

COMMON JUDGMENT

Both the appeals have been filed challenging the award passed by the Motor Accident Claims Tribunal, Madurai in MCOP.No.1365 of 2003.

2.C.M.A(MD).No.5 of 2013 has been filed by the claimant seeking enhancement of compensation.

3.C.M.A(MD).No.349 of 2015 has been filed by the Transport Corporation challenging the quantum of award.

4.-The claimant who was working as a Manager in Indian Bank met with an accident on 17.11.2002 while he was travelling in a bus belonging to the Transport Corporation. According to the claimant, he had boarded the Transport Corporation Bus at Madurai to reach Namakkal. At about 1.30 a.m when the bus was proceeding towards Namakkal, due to the rash and negligent driving of the driver of the first respondent bus, met with an accident in which the claimant had sustained grievous injuries.



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5.The claimant had further contended that he was an in-patient from 18.11.2002 to 19.12.2002 and he had also underwent surgery for inserting the steel plate with screw in the left leg. He had further contended that he was again admitted to the Hospital on 26.02.2003 for removal of the said screw and plate. He was again admitted to the Hospital between 30.04.2004 to 05.05.2004. In view of the said accident, he had lost his promotional opportunity. The claimant had sought for a compensation of Rs.10,00,000/-.

6.The Transport Corporation Bus in which the claimant had travelled filed a counter contending that the accident has not taken place due to the negligence on the part of its driver, but only due to the fact of negligent driving on the part of the driver of the lorry that was ahead of the bus. The Transport Corporation had also questioned the quantum of compensation as prayed for in the claim petition.

7.The Tribunal after considering the oral and documentary evidence, had arrived at a finding that the claimant had sustained serious injuries while he was travelling as a passenger in the bus belonging to the first respondent Transport Corporation only due to the rash and negligent driving on the part of the driver of the Transport Corporation. The



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Tribunal had awarded Rs.30,000/- towards pain and suffering, Rs.50,000/- towards medical expenses, Rs.6000/- towards extra nourishment and attender expenses. The Tribunal found that the claimant has not produced any material to establish that he could not encash the privilege leave at the time of superannuation. However, proceeded to award a sum of Rs.84,000/- under the head of loss of earning during the period of treatment. The Tribunal had further awarded Rs.25,000/- towards 30% of disability. In total, a sum of Rs.1,95,000/- was awarded by the Tribunal.

8.The learned counsel for the appellant/ transport corporation had contended that when the Tribunal had arrived at a specific finding that the claimant has not established his monetary loss during the period of treatment or due to non availability of encashment of privilege leave, ought not to have awarded a sum of Rs.84,000/- under the head of loss of income. Hence, he prayed for allowing the appeal.

9.The learned counsel for the appellant/claimant had contended that the claimant had to avail half sick leave and leave on loss of pay during the period of treatment. Therefore, the Tribunal was right in awarding a sum of Rs.84,000/- towards loss of income during the period



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of treatment. He had further contended that if the claimant had not availed the privilege leave, he could have encashed the accumulated leave at the time of his superannuation. Since the claimant had availed the leave, he could not encash and same and there is a monetary loss. However, the said fact has not been considered by the Tribunal and no amount was awarded under the said head.

10.The learned counsel for the claimant had further contended that the Tribunal has erroneously taken into consideration the salary that was received by the claimant at the time of accident instead of the salary that was received by the claimant at the time of superannuation for calculation of encashment of privilege leave. He had further contended that the Tribunal has awarded only a sum of Rs.30,000/- towards pain and suffering. Despite documentary evidence relating to the disability of 30%, the Tribunal had just awarded a sum of Rs.25,000/-. He had further contended that only a sum of Rs.6000/- is awarded as extra nourishment and attender charges. Therefore, he prayed for enhancing the award under these heads.

11.I have considered the submissions made on either side and perused the materials available on record.



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12.The claimant was travelling as a passenger in the bus belonging to the appellant transport corporation. The bus had dashed against the rear side portion of the lorry which was going ahead. Therefore, the Tribunal has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the appellant transport corporation. This Court does not find any reason to interfere in the said finding.

13.In the claim petition, the claimant had claimed a sum of Rs.84,000/- towards loss of earning from 18.11.2002 till 29.02.2003. Admittedly, the claimant is a Manager in Indian Bank and he has been examined as PW1. During the chief examination, the claimant has not made any averments with regard to the loss of income during the period of treatment. In the claim petition, he has only averred that he has lost his chances of promotional opportunity. However, during the cross examination, the claimant has admitted that he has no records to establish that he has lost his promotional opportunity due to the injuries sustained by him in the accident.

14.The claimant has not placed on record any document to establish that he was on loss of pay or he was paid half salary during his



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leave period. It is also not known how a sum of Rs.84,000/- was arrived at by the claimant under the head of loss of income during the period of treatment. Therefore, it is clear that the Tribunal was not right in awarding a sum of Rs.84,000/- under the head of loss of income during the period of treatment.

15.The learned counsel for the claimant had contended that the claimant had availed privilege leave due to the injuries sustained by him in the accident. Since he had availed all privilege leave available with him, he could not encash the same at the time of his retirement. Therefore, the Tribunal ought to have compensated the said monetary loss.

16.The learned counsel of the appellant had produced the Indian Bank (Officers') Service Regulations 1979. A perusal of the same indicates that the privilege leave can be accumulated up to 240 days which could be encashed at the time of superannuation. The service regulation further reveals that an officer in Indian Bank is entitled to avail sick leave for a maximum period of 18 months during the entire service. While availing the sick leave, the officer shall be entitled to receive one half of the full emoluments.



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17.Exhibit P13 is the communication addressed by the Indian Bank, Paramathi Branch to the Personnel Department, Indian Bank, Circle Office at Salem. A copy of the same has been marked to the claimant. A perusal of the said communication indicates that the claimant has availed privilege leave on medical ground for 129 days. He has also availed full pay sick leave for 80 days. The letter further indicates that the claimant was still having 28 days of privilege leave and 22 days of half pay sick leave to his credit as on 18.08.2003. A careful screening of the said document would further reveal that the claimant has not availed any leave on loss of pay or half pay sick leave.

18.Exhibit P15 is the application submitted by the claimant to the Bank for reimbursement of hospitalization expenses. The claimant had claimed a sum of Rs.91,920.97. However, the Bank by its communication dated 18.03.2004 has allowed only a sum of Rs.42,490/- towards reimbursement of medical expenses. As could be seen from the award of the Tribunal, the balance amount of Rs.50,000/- towards medical expenses has already been awarded by the Tribunal.

19.Exhibit P19 consists of 3 documents issued by the Bank dated 20.02.2009, 30.04.2009 and 06.05.2009. The claimant had retired on



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28.02.2009. A perusal of the letter addressed by the Bank to the claimant on 20.02.2009 does not reveal about any loss of income due to the non encashment of privilege leave. The letter dated 30.04.2009 is only a salary certificate for the month of February 2009. The letter dated 06.05.2009 is the salary certificate for the month of November 2002. Therefore, exhibit P19 is no way useful in arriving at a conclusion that the claimant had incurred monetary loss due to the non availability of the privilege leave for encashment. There is no pleading whatsoever in the claim petition that the claimant had incurred monetary loss due to availing of privilege leave under the medical grounds. Even in the deposition, the claimant has not whispered anything about his loss of income due to non encashment of privilege leave. Therefore, it is clear that the claimant has not established that he had incurred monetary loss due to the fact of availing of privilege leave. The claimant has not produced the communication referring to the retirement benefits that would have been issued by the Bank at the time of retirement. In fact, the claimant had retired on 28.02.2009 and he was re-examined before the Tribunal on 10.06.2009 i.e. after his retirement. However, the claimant has not chosen to produce any records from the Bank to establish the fact



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that he had not monetarised 240 days of privilege leave which is the maximum leave available to him. Therefore, this Court is of the opinion that the claimant has miserably failed to establish his loss of income either during the period of treatment or at the time of his retirement.

20.Exhibit P18 is the disability certificate issued by the Assistant Surgeon of Government Rajaji Hospital, Madurai. As per the said certificate, the claimant had sustained 30% of partial permanent disability. Without assigning proper reasons, the Tribunal has just awarded a sum of Rs.25,000/- towards permanent disability. Therefore, this Court is inclined to award Rs.2000/- per percentage of the disability namely a sum of Rs.60,000/- under the head of partial permanent disability.

21.The claimant has sustained grievous injuries and he has been implanted with steel plate with screw which was later removed through a second surgery. Therefore, the Tribunal was not right in awarding a sum of Rs.30,000/- towards pain and suffering. This Court is inclined to enhance the same to Rs.50,000/-. As far as the medical expenses are concerned, the award of the Tribunal stands confirmed.

22.The claimant has been an inpatient for more than 100 days and



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therefore, the Tribunal was not right in awarding a sum of Rs.6,000/- alone for extra nourishment. This Court is inclined to enhance it to Rs.15,000/-. The claimant met with an accident near Paramathi and was originally admitted to Government Hospital at Namakkal and later, he was shifted to Senthil Nursing Home at Madurai. Therefore, the Tribunal ought to have awarded transport expenses. This Court is inclined to award a sum of Rs.10,000/- towards transport expenses. Exhibits P9 to P11 are the discharge summaries which would indicate that the claimant was admitted to the hospital on 3 occasions, totalling 36 days. However, the Tribunal has not chosen to award any amount towards attender charges. Therefore, this Court is inclined to award a sum of Rs.10,000/- towards attender charges for the period of treatment.

23.In view of the above said deliberations, the award of the Tribunal is arrived at as follows:

(a).Pain and suffering	Rs.50,000.00
(b).Medical expenses	Rs.50,000.00
(c).Extra nourishment	Rs.15,000.00
(d).30% of disability (30x2000)	Rs.60,000.00
(d).Transport expenses	Rs.10,000.00
(e).Attender charges	Rs.10,000.00

	Rs.1,95,000.00



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24.The Tribunal has chosen to award a sum of Rs.1,95,000/- and this Court does not find any reason to enhance the same under any one of the heads in view of the deliberation in the preceding paragraphs. Therefore, the quantum of award passed by the Tribunal is hereby confirmed.

25.Accordingly, C.M.A(MD).Nos.5 of 2013 and 349 of 2015 stand dismissed. No costs.

05.06.2023

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

1.The Motor Accident Claims Tribunal
/Additional District Court Cum Fast Tract Court No.II,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR,J.

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Pre-delivery Common Judgement made in
C.M.A(MD)Nos.5 of 2013 and 349 of 2015

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