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C.M.A(MD)No.542 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.01.2023

Pronounced on : 09.02.2023

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THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.542 of 2020

The Managing Director,
M/s.Tamilnadu State Transport Corporation Ltd.,
(Kumbakonam Division-II),
Periamilaguparai,
Trichy -1.

... Appellant / Respondent

Vs.

K.K.Ravichandran

... 1st respondent / claimant

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the impugned award passed in M.C.O.P.No.46 of 2018 on the file of the MACT (Sub Court), Thuraiyur dated 16.09.2019.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondent : Mr.N.Sudhakar Nagaraj



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JUDGMENT

This appeal is filed against the judgment and decree passed M.C.O.P.No.46 of 2018 on the file of the Subordinate Court, Thuraiyur. The appellant herein is the respondent and the respondent herein is the claimant in the claim petition.

2.Brief substance of the claim petition is as follows:

On 03.01.2013, at about 9.15 p.m., when the petitioner was riding a two wheeler bearing registration number TN 48 Y 5100, along with the pillion rider along the Namakkal to Musiri road, keeping the extreme left side of the road, a bus bearing registration number TN 45 N 2137 came in a rash and negligent manner and dashed against the petitioner. The petitioner sustained injury. He was admitted in Musiri Government Hospital and he took treatment as inpatient from 03.01.2013 till 14.01.2013, and again from 15.02.2013 till 19.02.2013. Later he was admitted in Ganga Hospital, Coimbatore from 19.01.2014 till 26.01.2014 again he took treatment as inpatient from 25.05.2014 till 31.05.2014. Subsequently, he took treatment as outpatient. The petitioner was aged about 46 years at the time of accident.



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He was doing agricultural work and was earning Rs.15,000/- per month. The petitioner claim a sum of Rs.10,000/- as compensation.

3.Brief substance of the counter filed by the respondent is as follows:

The bus driver drove the vehicle in a slow and cautious manner, keeping the left side of the road. It was the rider of the two wheeler who came from the opposite direction in a rash and negligent manner and dashed against the bus. The claimant was not having valid driving licence. The claimant was responsible for the accident. The age, profession, income, injuries are all to be proved. The amount claimed is excessive.

4.One witness was examined and five documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.9,26,187/- as compensation. The Tribunal fixed 10% contributory negligence on the part of the claimant.

5.Against the award, the respondent preferred this appeal on the following grounds:



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Ex.P2 was mechanically accepted by the Tribunal. Without any material evidence, the Tribunal has fixed Rs.5,96,700/- as loss of income. The Tribunal is wrong in adopting multiplier method.

6.On the side of the appellant it is stated that the contributory negligence on the part of the claimant is to be enhanced to 25%. The claimant was not wearing helmet and the claimant was not having valid driving licence. Only an official from the Transport corporation was examined. But it is clearly admitted on the side of the claimant that there is no valid driving licence at the time of accident. Hence it is decided that the claimant is liable for contributory negligence and the contributory negligence is fixed as 15%.

7.On the side of the appellant, it is stated that the Tribunal has fixed the monthly income as Rs.8,500/-, without any proof of income. The accident has happened on 03.01.2013. Considering the date of accident, it is decided that the notional income fixed by the Tribunal is reasonable.

8.There is no dispute regarding the age of the deceased. The Medical Board has fixed the disability at 50%. The Tribunal fixed the disability at



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50% which is reasonable. On the basis of the judgment of the Hon'ble Supreme Court in **Sarala Verma Vs. Delhi Transport Corporation**, reported in **2009(2) TNMAC 1 (SC)**. The Tribunal fixed the loss of income as Rs.6,63,000/- which is reasonable. Four times the claimant was admitted as inpatient and he took treatment and the medical expenses are proved through Ex.P3 to Ex.P5. The Tribunal has awarded Rs.2,62,987 towards medical expenses which is reasonable.

9.The Tribunal has awarded a sum of Rs.25,500/- towards temporary loss of income. After applying multiplier for an injury case, there is no need to award separate amount towards temporary loss of income.

10.The Tribunal awarded has Rs.20,000/- towards pain and sufferings, Rs.5000/- towards extra nourishment, Rs.2,000/- towards transport expenses, Rs.4,000/- towards attendant charges, Rs.10,000/- towards future medical expenses which are all reasonable.

Hence the compensation is calculated as below:

Loss of income	-	Rs.6,63,000/-
For Pain and sufferings	-	Rs. 20,000/-



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For Medical expenses	-	Rs.2,62,987/-
Extra nourishment	-	Rs. 5,000/-
Transport expenses	-	Rs. 2,000/-
Attendant charges	-	Rs. 4,000/-
Future Medical expenses-		Rs. 10,000/-
Total -		Rs.9,66,987/-

After deducting 15% towards contributory negligence, the claimant is entitled to Rs.8,21,938/- as compensation.

11. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.9,26,187/- to **Rs.8,21,938/-(Rupees Eight Lakhs Twenty One Thousand Nine Hundred and Thirty Eight only)** which shall carry an interest of 7.5% per annum.

(ii) The appellant / Transport corporation is directed to deposit the compensation amount i.e., Rs.8,21,938/- (less the amount 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 cost to the credit of M.C.O.P.No.46 of 2018 on the file of the MACT (Sub Court), Thuraiyur, within a period of eight weeks from the date of receipt of a copy of this order.



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(iv) On such deposit being made, the respondent / claimant is at liberty to withdraw the entire award amount of Rs.8,21,938/-, after following the due process of law, less any amount already received by him. Claimant is not entitled for interest for the default period, if there is any.

09.02.2023

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

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To

- 1.The Subordinate Judge (Motor Accident Claims Tribunal), Thuraiyur.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R.THARANI, J.

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Pre - Delivery Judgment made in
C.M.A(MD)No.542 of 2020

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