



C.M.A.(MD)No.338 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.338 of 2022

V.Robert Benjamin

...Appellant/Petitioner

Vs.

Tamil Nadu State Transport Corporation,
Madurai represented through its
Managing Director and situated at
Byepass Road,
Manamadurai Town,
Sivagangai District.

...Respondent/Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and enhance the award amount in M.C.O.P.No.16 of 2013 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Sivagangai, dated 10.12.2021.

For Appellant : Mr.N.Tamilmani

For Respondent : Mr.K.Sudalaiyandi



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed challenging the quantum awarded by the Motor Accident Claims Tribunal, Subordinate Court, Sivaganagi in M.C.O.P.No.16 of 2013, dated 10.12.2021.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i) on 11.08.2011 at about 7.45 p.m., when the claimant was riding his motorcycle, the bus bearing Registration No.TN-58-N-1882 driven in a rash and negligent manner dashed against the claimant. As a result, the claimant has sustained bone fracture on his left thigh, left knee and laceration on his nose. He was admitted in the Government Hospital, Manamadurai. Thereafter, he was admitted in the Government Rajaji Hospital, Maudrai for further treatment.

(ii)at the time of accident, the claimant was working as a Carpenter and was earning a sum of Rs.10,000/- per month. A case was also registered against the driver of the bus.



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(iii) The respondent before the tribunal contended that the rider of the two-wheeler in an inebriated condition drove the vehicle at high speed at the middle of the road even without glowing the head light in his motorcycle and invited the accident. Despite the best efforts to slow down the bus, the claimant hit the bus. Hence, the learned counsel disputed the liability.

4. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P4 were marked. On the side of the respondent R.W.1 was examined and no documentary evidence had been marked.

5.The tribunal on appreciation of entire evidence available on record and having found that the accident was occurred in the middle road; the claimant consumed alcohol and the claimant has no valid driving license, awarded the compensation as indicated below:

S.No.	Description	Amount
1.	Monthly Income due to disability	Rs. 60,000/-
2.	Pain and suffering	Rs. 50,000/-
3.	Extra Nourishment	Rs. 10,000/-
4.	Attendant Charges	Rs. 10,000/-
	Total	Rs.1,30,000/-



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The Tribunal has fixed contributory negligence at 50% on the part of the rider of the two wheeler and awarded a sum of Rs.65,000/-. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the claimant.

6.I have heard the learned counsel appearing on either side and also perused the materials available on record.

7.The learned counsel appearing for the appellant submitted that the tribunal has fixed the contributory negligence of 50% on the part of the rider of the motorcycle without any basis. There is no evidence available on record to show that the injured was in inebriated condition. Without any proof for the same, the Tribunal has fixed 50% contributory negligence on the injured claimant. Further, the Tribunal has awarded a sum of Rs.2,000/- per a percentage of disability. It is also very meagre.

8.The learned counsel appearing for the respondent would submit that the Tribunal has rightly fixed the contributory negligence on the part of the rider of the two-wheeler and the same does not warrant any interference by this Court. Hence, he opposes this appeal.



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9. In view of the above submission, now the points arise for consideration in this appeal are:

(1) Whether the Tribunal is right in fixing 50% contributory negligence on the part of the claimant?

(2) Whether the compensation awarded by the Tribunal is proper?

10. Admittedly, the accident is not disputed by both sides. P.W.1 was examined to show that the bus, which was coming in an opposite direction, hit against the vehicle of the claimant. The fact remains that the accident had taken place in the middle of the road. Even assuming that the rider of the motorcycle did not have any valid license and driven the motorcycle in a rash and negligent manner and the driver of the bus ought to have driven the bus in a cautious manner, if the driver of the bus had applied break properly on seeing the main road, the accident could have been avoided.

11. The Tribunal has fixed contributory negligence on the part of the injured claimant, merely on the basis of Ex.P2, Accident Registrar stating that there is a smell of alcohol. Whether the injured was really in an inebriated condition or influenced with alcohol has not been spoken clearly. Therefore,



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merely on the reference under Ex.P2, this Court cannot come to the conclusion that the claimant was under inebriated condition. Admittedly, the rider of the motorcycle was not having valid license at the relevant point of time. Hence, the contributory negligence fixed by the Tribunal at 50% is reduced to 30%.

12.The Tribunal had fixed a sum of Rs.2,000/- towards each of the disability sustained by the claimant in the accident. This Court is of the view that the same is low at the relevant point of time. Hence, this Court fixes a sum of Rs. 3,000/- per each percentage of disability. In all other heads, the compensation awarded by the Tribunal is hereby confirmed. In the result, the claimant is entitled to the compensation as stated below:

S.No.	Description	Amount
1.	Monthly Income due to disability	Rs. 90,000/-
2.	Pain and suffering	Rs. 50,000/-
3.	Extra Nourishment	Rs. 10,000/-
4.	Attendant Charges	Rs. 10,000/-
	Total	Rs.1,60,000/-

13.In fine, this Civil Miscellaneous Appeal is allowed and the award granting compensation of Rs.65,000/- made by the Tribunal is modified as stated above.



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14.The respondent is directed to deposit the compensation amount i.e., Rs.1,12,000/- (Rupees One Lakh Twelve Thousand only) as modified by this Court with interest at the rate of 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.16 of 2013, on the file of the Motor Accident Claims Tribunal /Subordinate Court, Sivaganai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. 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/
Subordinate Court, Sivagangai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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