



C.M.A.(MD)No.204 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 27.02.2023

Delivered On : 14.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.204 of 2019

Through its
The Managing Director,
The Tamil Nadu State Transport
Corporation Limited,
Bye Pass Road,
Dindigul Post,
Dindigul.

.. Appellant

Vs.

M.Selvan

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.124 of 2016 dated 04.08.2018 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Theni camp at Periyakulam.

For Appellant
For Respondent

: Mr.K.Sudalaiyandi
: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.124 of 2016 dated 04.08.2018, on the file of the Motor Accident



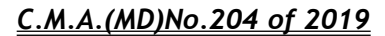
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Claims Tribunal, Additional District and Sessions Judge, Theni camp at Periyakulam.

2.The appellant herein is the respondent and the respondent herein is the petitioner in the claim petition. The respondent herein has filed a claim petition in M.C.O.P.No.124 of 2016, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 19.11.2015. The Tribunal has awarded a sum of Rs.22,54,000/- (Rupees Twenty Two Lakhs and Fifty Four Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.124 of 2016 is as follows:

On 19.11.2015, at about 09.15 a.m., when the petitioner was walking along the edge of Theni – Periyakulam main road, a bus bearing registration No.TN-57-N-1899 came in a rash and negligent manner and dashed against the petitioner and he sustained injuries. He was admitted in Periyakulam Government hospital and that after getting first aid, he was admitted in Madurai Rajaji hospital and he took treatment as 'inpatient' for a period of 55 days. The left leg of the petitioner was amputated from knee level. Before the accident, the petitioner was working as Scavenger in a cinema theatre and he was earning Rs.9,000/- (Rupees Nine



(Rupees Ten Lakhs only) as compensation.

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

The age, profession, income, period of treatment, medical expenses, nature of injuries and disability are all denied. The petitioner is not entitled to claim compensation under the Motor Vehicles Act. The claim is excessive. The bus driver drove the vehicle in a slow and cautious manner observing the rules. It was the petitioner, who tried to cross the road and he sustained only simple injuries. The bus driver is not responsible for the accident.

5. On the side of the petitioner, two witnesses were examined and five documents were marked. On the side of the respondent therein, one witness was examined and no document was marked and one Court document was marked. After trial, the Tribunal has awarded a sum of Rs.22,54,000/- (Rupees Twenty Two Lakhs and Fifty Four Thousand only) as compensation to be paid by the respondent. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:-

The Tribunal failed to note that the appellant bus driver was not at all



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negligent. It was the respondent, who invited the accident by his carelessness and negligence. The Tribunal ought to have believed the evidence of R.W.1. The Tribunal ought not to have adopted multiplier method and the monthly income fixed by the Tribunal is excessive. When the Medical Board has assessed the disability as 80%, the Tribunal is wrong in fixing the disability as 100%. The Tribunal awarded Rs.4,00,000/- (Rupees Four Lakhs only) towards pain and suffering, Rs.3,00,000/- (Rupees Three Lakhs only) towards attendant charges, Rs.1,00,000/- (Rupees One Lakh only) towards extra nourishment, Rs.50,000/- (Rupees Fifty Thousand only) towards transport expenses, which are all excessive.

6.On the side of the appellant, it is stated that it was the rider of the two wheeler who drove the vehicle in a rash and negligent manner and he fell into the bus. The copy of the FIR was marked as Ex.P1. MV report was marked as Ex.P3. Chargesheet was marked as Ex.P4. R.W.1 was the driver of the bus. No independent witness was examined on the side of the appellant. In Ex.P1 and Ex.P4, R.W.1 was mentioned as an accused. R.W.1 has deposed that he was temporarily suspended due to this accident. In view of the above, it is decided that the driver of the bus is responsible for the accident and the appellant Transport Corporation is liable to pay compensation.

7.On the side of the appellant, it is stated that the Tribunal fixed the



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disability as 100%, whereas the doctor assessed the disability only as 80%. The Medical Board has assessed the disability as 80% and the disability certificate issued by the Board was marked as Court document Ex.C1. The accident register copy was marked as Ex.P2. Considering Ex.P2 and Ex.C1 and considering the fact that the left leg of the claimant was amputated from the knee level, it is decided that the deceased was having 80% disability.

8.P.W.2 has deposed that the appellant was working as the Scavenger in a cinema theatre and he was earning Rs.300/- (Rupees Three Hundred only) per day. For 80% of disability, the income of the appellant is fixed as Rs.7,200/- (Rupees Seven Thousand and Two Hundred only) per month. Considering the age of the respondent, multiplier '13' is applicable. After applying multiplier '13', the income is calculated as 11,23,200/- (Rupees Eleven Lakhs Twenty Three Thousand and Two Hundred only).

9.The Tribunal has awarded Rs.4,00,000/- (Rupees Four Lakhs only) towards pain and suffering, Rs.3,00,000/- (Rupees Three Lakhs only) towards attendant charges, Rs.1,00,000/- (Rupees One Lakh only) towards extra nourishment, which are excessive. The appellant is entitled to Rs.1,00,000/- (Rupees One Lakh only) towards pain and suffering, Rs.1,00,000/- (Rupees One Lakh only) towards attendant charges, Rs.30,000/- (Rupees Thirty Thousand only) towards extra



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nourishment and Rs.20,000/- (Rupees Twenty Thousand only) towards transportation expenses. In total, a sum of Rs.13,73,200/- (Rupees Thirteen Lakhs Seventy Three Thousand and Two Hundred only) is awarded as compensation.

10.In the result, this Civil Miscellaneous Appeal is **partly allowed**. The compensation is reduced from Rs.22,54,000/- to Rs.13,73,200/- (Rupees Thirteen Lakhs Seventy Three Thousand and Two Hundred only).

11.The appellant herein is directed to deposit Rs.13,73,200/- (Rupees Thirteen Lakhs Seventy Three Thousand and Two Hundred only) with 7.5% interest from date of the claim petition till the date of deposit and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the respondent herein is permitted to withdraw the award amount with proportionate interest and costs after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. Excess amount if any shall be refunded to the appellant. No Costs.

14.03.2023

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



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To

- 1.The Motor Accidents Claims Tribunal, Additional District and Sessions Judge,
Theni, Periyakulam.
- 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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