



C.M.A.(MD)No.1336 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 10.11.2022

Delivered On : 15.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1336 of 2014

The Managing Director

Tamil Nadu State Transport

Corporation Division-I,

Kumbakonam.

... Appellant / Respondent

Vs.

S.Mohan

... Respondent / Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.2570 of 2013, dated 03.10.2013, on the file of the Motor Accident Claims Tribunal / Special Sub Court, Tiruchirappalli.

For Appellant

: Mr.P.Prabhakaran

For Respondent

: Mr.T.A.Omprakash

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.2570 of 2013, dated 03.10.2013, on the file of the Motor Accident Claims Tribunal / Special Sub Court, Tiruchirappalli. The appellant herein is the



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respondent and the respondent herein is the claimant in the original M.C.O.P.

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Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.2570 of 2013, is as follows:

On 18.08.2006, at about 5.45 pm, when the petitioner was standing with his bi-cycle at the roundana near Head Post office, Bharathiar Salai, Trichy, a bus bearing Registration No.TN-49-N-1207 came in a rash and negligent manner, overtaking a private bus hit against the petitioner. The petitioner sustained injuries. The petitioner claimed a sum of Rs.12,00,000/- as compensation.

3. A Brief substance of the counter filed by the respondent, in M.C.O.P. No.2570 of 2013, is as follows:

The driver of the respondent's bus drove the bus in a careful and cautious manner, observing the traffic Rules. The driver of the bus was not at all rash or negligent. The manner of accident as alleged in the petition is wrong. It was the petitioner, who suddenly crossed the road, without observing the traffic. The cyclist rubbed on the pumper of the vehicle, only due to the negligence of the petitioner, he invited the accident. The age, occupation, income, nature of injuries, manner of treatment, disability, medical expenses are all denied. The claim is excessive.



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4. 2 witnesses were examined and 13 documents were marked, on the side of the claimants. 1 witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.7,26,590/- as compensation.

5. Against the order, the respondent / appellant has filed this appeal, on the following grounds:-

The Tribunal is wrong in fixing the entire responsibility on the bus driver. P.W.2-Doctor has issued the disability certificate, Ex.P13 and assessed the disability at 45%, but, the Tribunal is wrong in fixing the monthly income as Rs.3,000/- and in applying multiplier method. The Tribunal awarded Rs.1,75,590/- towards medical expenses, Rs.5,000/- towards transportation charges, Rs.5,000/- towards extra nourishment, Rs.2,000/- towards medical charges, Rs.,25,000/- towards pain and sufferings, Rs.1,00,000/- towards loss of expectation of life, Rs.25,000/- towards future medical expenses, which are all excessive.

6. On the basis of the evidence of P.W.1 and on the basis of Ex.P1-copy of the F.I.R, the Tribunal has fixed the responsibility on the bus driver. R.W.1 is the driver of the bus. No independent witness was examined on the side of the



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respondent. In the above circumstances, it is decided that the accident has happened due to the rash and negligent driving of the bus driver.

7. On the side of the appellant, it is stated that the Tribunal has fixed the disability much more than that was fixed by the Doctor, who was examined as P.W.2.

8. On the side of the respondent, it is stated that the claimant sustained head injury, artificial bone was inserted and the claimant is still suffering due to the insertion of the artificial bone. The claimant suffered head ache on exposure to sun light. He could not attend to his activities as before. He has to dis-continue his studies. This is a fit case to be considered as per the dictum of the Hon'ble Supreme Court reported in Rajkumar Vs. Ajaykumar.

9. It is seen that P.W.2-Doctor was examined and he has assessed the disability as 45%. Discharge summary was marked as Ex.P2 and P3. CT scan reports were marked as Ex.P4 to Ex.P7. Photograph with negative was marked as Ex.P8. X-Ray was marked as Ex.P.12. Disability certificate was marked as Ex.P13. P.W.2, a Neuro surgen has deposed that the claimant suffered ellipse and that he suffered pain due to the insertion of artificial bone. He fixed the disability as 45%. On the



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basis of the medical records, the Tribunal has fixed the functional disability at 60%, which is unreasonable. The Tribunal is not a medical expert to enhance the disability, fixed by a competent Doctor. Hence, it is decided that the claimant suffered only 45% disability in the accident.

10. On the side of the appellant, it is stated that since the accident has occurred in the year 2006 for 45% disability, the Tribunal ought to have awarded only Rs.90,000/- as compensation and that the Tribunal has adopted multiplier method in fixing the loss of income, which is unwarranted.

11. Adopting multiplier method for fixing loss of income in a case of head injury is reasonable. The Tribunal has fixed the monthly income as Rs.3,000/-, which is reasonable. For 45% disability, the claimant is entitled to Rs.2,91,600/- (Rs.3,000/- X 45% X 12 X 18 = Rs.2,91,600/-).

12. The Tribunal has awarded Rs.1,75,590/- towards medical expenses. Considering the medical bills-Ex.P9, it is decided that the amount awarded by the Tribunal is reasonable. The Tribunal has awarded Rs.5,000/- towards transport expenses, Rs.5,000/- towards extra nourishment, Rs.2,000/- towards medical assistance, Rs.25,000/- towards pain and sufferings, Rs.25,000/- towards



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future medical expenses, which are all reasonable.

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13. The Tribunal has stated that the claimant has suffered ellipse and other mental disorder and awarded Rs.1,00,000/- towards loss of expectation of life. Without any evidence, the Tribunal cannot decide that the claimant suffered mental disorder. The claimant has not chosen to claim any amount under this head. But considering the age of the claimant, a sum of Rs.50,000/- is awarded towards loss of expectation of life.

14. The total compensation is calculated as follows:-

45% Disability	:	Rs.2,91,600/-
Medical bills	:	Rs.1,75,590/-
Transportation	:	Rs. 5,000/-
Extra nourishment	:	Rs. 5,000/-
Medical assistance	:	Rs. 2,000/-
Pain and sufferings	:	Rs. 25,000/-
Loss of expectation of life	:	Rs. 50,000/-
Future medical expenses	:	Rs. 25,000/-
Total compensation	:	 Rs.5,79,190/-



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15. This appeal is partly allowed. No costs. The compensation is reduced from Rs.7,26,590/- to Rs.5,79,190/-.

(i) The claimant is entitled to Rs.5,79,190/- as compensation.

(ii) The Transport Corporation is directed to deposit the entire compensation of Rs.5,79,190/- (if not 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 respondent / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. Excess amount, if any, shall be refunded to the Transport Corporation.

15.02.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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R. THARANI, J.

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To

- 1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.1336 of 2014

15.02.2023