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C.M.A(MD)No.245 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.01.2023

Pronounced on : 01.03.2023

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THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.245 of 2020

V.Soundararajan

... Appellant / Complainant

Vs.

The Administrative Director,
Tamil Nadu State Transport Corporation,
Karaikudi.

... Respondent / Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to modify the fair and decreetal order dated 29.04.2017, by enhancing the award made in M.C.O.P.No.434/2013 on the file of the Special Sub Court, Dindigul.

For Appellant : Ms.S.Vijayashanthi

For Respondent : Mr.P.M.Vishnuvarthanan



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the judgment and decree passed in M.C.O.P.No.434/2013 on the file of the Special Sub Court, Dindigul. The appellant herein is the claimant, respondent herein is the respondent in the claim petition.

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

On 24.02.2014, at about 2 p.m., when the petitioner was travelling in a two wheeler bearing registration number TN 20 AD 1242 in a slow and cautious manner adhering to the road rules. A bus bearing registration number TN 63 N 1445 came in a rash and negligent manner and dashed against the petitioner from behind. The petitioner sustained injuries. He was admitted in Dindigul JCP Hospital as inpatient and he was discharged on 25.02.2013. Thereafter he was admitted in Coimbatore Ganga Medical centre as inpatient and he was discharged on 27.02.2013. The petitioner sustained permanent disability. He was working as a driver in a JCB vehicle and was earning Rs.25,000/- per month. The petitioner claim a sum of Rs. 15,00,000/- as compensation.



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

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The driver of the bus drove the vehicle in a slow and cautious manner. It was the petitioner who was riding the two wheeler while he was attending a phone call in the cell phone. He was holding the phone in the left hand and he increased the speed with the right hand and he has invited the accident. The age, profession, income, medical expenses, mode of treatment, period of treatment, permanent disability are all to be proved. The claim is excessive.

4. One witness was examined and four documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.5,79,000/- as compensation.

5. Against the award, the appellant preferred this appeal for enhancement on the following grounds:

The Tribunal failed to award compensation for medical expenses. The right leg of the petitioner was amputated below the knee level. The Tribunal ought to have fixed the disability at 70%, as per the certificate issued by the Doctor, which was marked as Ex.P4. The Tribunal is wrong in reducing the



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disability as 50%. The lower Court failed to adopt multiplier method in the proper manner. The Tribunal is wrong in fixing the monthly income as Rs.6,000/- per month whereas the monthly income of the appellant is Rs.25,000/- per month. The amount of compensation for pain and sufferings, loss of earning, extra nourishment, transport expenses are all to be enhanced.

6.On the side of the appellant, it is stated that the bus hit the petitioner from behind. On the side of the respondent it is stated that it was the petitioner who was negligent in riding the two wheeler. Considering the evidence of P.W.1 and considering Ex.P.1, 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 right leg of the appellant was amputated from the knee level and that without considering this aspect, the Tribunal has fixed the disability at 50% and pray the same to be enhanced. It is seen that the wound certificate was issued by the Medical Board. Hence, it is decided that the disability is 70%.



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8. On the side of the appellant, it is stated that the appellant was earning Rs.25,000/- per month and that he was working as a driver in a JCB. Driving licence of the appellant was not marked as a document. No witness was examined to prove that the appellant was a driver working in a JCB.

9. Considering the date of accident, the notional income of the appellant is fixed as Rs.9,000/- per month. The claimant sustained 70% disability. Hence, the loss of monthly income is calculated as Rs.6,300/- ($9000 \times 70/100$). The age of the appellant is 43 years and hence multiplier 14 is applicable. Hence, the loss of income is calculated as Rs.10,58,400/- ($6300 \times 12 \times 14$). Since the multiplier method was adopted it is decided that the appellant is not entitled for separate compensation for permanent disability.

10. On the side of the appellant it is stated that the Tribunal has awarded Rs.25,000/- towards pain and sufferings and Rs.25,000/- towards loss of amenities, Rs.20,000/- towards extra nourishment, Rs.5,000/- towards attendant charges and the same is to be enhanced.



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11.Considering that the right leg of the appellant was amputated, below the knee level, the compensation for pain and sufferings is enhanced to Rs.50,000/-. The Tribunal has awarded Rs.25,000/- towards loss of amenities, Rs.20,000/- towards extra nourishment, Rs.5,000/- towards attendant charges which are all reasonable.

12.On the side of the appellant, it is stated that the Tribunal failed to consider the medical expenses incurred by the appellant. The discharge summary issued by the Coimbatore Ganga Hospital was marked as Ex.P3. No other document was marked on the side of the appellant to prove the medical expenses. Hence it is decided that the appellant is entitled to Rs.25,000/- towards medical expenses.

The award is modified as follows:

Temporary loss of income	-	Rs.10,58,400/-
For pain and sufferings	-	Rs. 50,000/-
Loss of amenities	-	Rs. 25,000/-
Extra nourishment	-	Rs. 20,000/-
Attendant charges	-	Rs. 5,000/-
Medical expenses	-	Rs. 25,000/-

Total	-	Rs.11,83,400/-



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

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.5,79,000/- to Rs.11,83,400/- (Rupees Eleven Lakhs Eighty Three Thousand and Four Hundred only) with an interest at the rate of 7.5% per annum.

(ii) The claimant is directed to pay additional Court fee for the enhanced amount;

(iii) The respondent herein / the Transport Corporation is directed to deposit the enhanced compensation amount i.e., Rs.11,83,400/- (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 in M.C.O.P.No.434/2013 on the file of the Special Sub Court, Dindigul, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the entire award amount of Rs.11,83,400/- (Rupees Eleven Lakhs Eighty Three Thousand and Four Hundred only), with proportionate interest



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at the rate of 7.5% per annum, after following the due process of law, less any amount already received by them. The claimant is not entitled for any interest for the default period if any.

01.03.2023

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

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To

- 1.The Motor Accidents Claims Tribunal / Special Sub Court, Dindigul.
- 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
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