



C.M.A.(MD)No.1202 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 14.02.2023

Delivered On : 25.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1202 of 2018

Tamil Nadu State Transport Corporation

Kumbakonam Limited,

through its Managing Director,

Periyamilaguparai,

Collector Office Road, Trichy.

.. Appellant / 1st Respondent

Vs.

1.K.Karthikeyan

.. 1st Respondent / Petitioner

2.C.Prabhakaran

3.M/s.United India Insurance Company Limited,

through its Manager, No.868/3, 1st Floor,

Govindan Complex, Madurai Road,

Melur, Madurai District.

.. Respondents 2 & 3 / Respondents 2 & 3

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.200 of 2014, dated 14.08.2018, on the file of the Motor Accidents Claims Tribunal / Additional Sub Court, Karur.



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For Appellant

: Mr.P.Prabhakaran

For Respondents

: Mr.V.Balaji for R1

: Mr.C.Jawahar Ravindran for R3

: No appearance for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.200 of 2014, dated 14.08.2018, on the file of the Motor Accidents Claims Tribunal - Additional Sub Court, Karur. The appellant herein is the second respondent, the first respondent herein is the claimant and the respondents 2 & 3 herein are the respondents 2 & 3 in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.200 of 2014, is as follows:

On 29.09.2014, at about 01.15 pm, when the petitioner was travelling in a bus bearing Registration No.TN-45-N-3198, the bus driver drove the vehicle in a rash and negligent manner and he try to overtake a lorry bearing Registration No.TN-45-H-3001 that was proceeding infront of the bus and hit against the lorry and the right elbow of the petitioner rubbed against the lorry and the right hand was severed and it fell down. The petitioner was admitted in Karur Amaravathi Hospital. After getting first aid, he was admitted in Karur Raj Ortho Hospital. The right hand



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was amputated from the shoulder. The petitioner was aged about 21 years and he was earning Rs.15,000/- by working as a machine operator in a private institution. He sustained 100% permanent disability. He claim a sum of Rs.50,000,000/- as compensation.

3. A brief substance of the counter filed by the first respondent, in M.C.O.P.No.200 of 2014, is as follows:-

The manner of accident as narrated in the petition is denied. When the bus driver drove the vehicle in a slow and cautious manner, keeping the left side of the road, a lorry came from the opposite direction in a rash and negligent manner, along the wrong side of the road. Though the bus driver try to avoid the accident, it was the lorry that dashed against the bus. The accident has happened only due to the rash and negligent driving of the lorry driver. The petitioner has to prove his injuries, disability, period of treatment and medical expenses. Rate of interest claimed in the petition is excessive. The claim is excessive.

4. A brief substance of the counter filed by the third respondent, in M.C.O.P.No.200 of 2014, is as follows:-

The driver of the lorry is not responsible for the accident, even as per the narration in the claim petition, it was the bus driver, who try to overtake a lorry that



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came to the right side of the road and hit against the opposite lorry and the bus driver is the tortfeasor. Criminal case was lodged only against the bus driver. The owner of the bus and the driver are liable to pay compensation to the claimant. The manner of accident, age, profession, income of the petitioner are all denied.

5. Two (2) witnesses were examined, 10 documents were marked on the side of the petitioner. One (1) witness was examined and 1 document was marked on the side of the first respondent. No witness was examined and no document was marked on the side of the third respondent. After considering both sides, the Tribunal awarded a sum of Rs.32,34,044/- as compensation to be paid by the first respondent.

6. Against the award, the first respondent - appellant has filed this appeal on the following grounds:-

The Tribunal is wrong in holding that the driver of the appellant was solely responsible for the accident. The Tribunal has failed to fix the entire negligence on the driver of the lorry. The award is excessive. The Tribunal has fixed the disability as 90%, which is high. P.W.2-Doctor had not treated the injured, but, he assessed the disability as 90%, which is unsustainable. Tribunal has fixed the functional disability as 100%, without any basis. The Tribunal fixed the income as Rs.9,000/- per month. The Tribunal has added 50% towards future prospects and calculated the



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loss of income as Rs.29,16,000/-, which is excessive. The Tribunal awarded Rs.1,00,000/- towards attender charges, Rs.25,000/- towards loss of daily affairs, Rs.10,000/- towards pain and sufferings, Rs.5,000/- towards extra nourishment and Rs.1,78,044/- towards medical expenses, which are all excessive.

7. On the side of the appellant, it is stated that the claimant kept his hand out side the bus and he invited the accident. On the side of the first respondent - claimant, it is stated it was the rash and negligent driving of the bus driver that was the reason for the accident.

8. On the side of the third respondent it is stated that the injured travelled in the appellant bus. It was the bus driver, who was rash and negligent, while overtaking the another vehicle, he dashed against the opposite lorry and the right hand of the claimant was severed and it fell down. F.I.R (Ex.P1) is against the bus driver. Rough sketch was marked as Ex.R1, which reveals that it was the bus, which came to the wrong direction.

9. Copy of F.I.R was marked as Ex.P1. Copy of rough sketch was marked as Ex.R1. P.W.1 has deposed that the bus driver was rash and negligent. R.W.1 has deposed that it was the claimant, who was negligent and that the lorry driver was



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responsible for the accident. The bus, being a passenger vehicle is to be driven in more cautious manner. It is the duty of the bus conductor and driver to see that the passengers were keeping their hands inside the bus. Hence, it is decided that the accident has happened due to the rash and negligent driving of the bus driver. Since the claimant was keeping his elbow outside the bus, he is liable for 10% of contributory negligence.

10. On the side of the appellant, it is stated that there is no proof of income, but, the Tribunal has fixed the monthly income as Rs.9,000/-, which is excessive.

11. On the side of the first respondent, it is stated that the salary certificate was marked as Ex.P5. Bank Passbook was marked as Ex.P6. Instead of fixing the monthly income as Rs.15,000/-, the Tribunal has fixed the income as Rs.9,000/- pm, which is very low.

12. No witness was examined to substantiate the salary certificate -Ex.P5. The Tribunal fixed the notional monthly income as Rs.9,000/-. Considering the date of accident, the monthly income fixed by the Tribunal is reasonable. The claimant was a bachelor aged about 22 years, his right hand was amputated. Wound



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certificate was marked as Ex.P2. Discharge summary issued by the Raj Ortho Hospital was marked as Ex.P3. Photograph of the claimant was marked as Ex.P8. Disability certificate was marked as Ex.P9. X-Ray was marked as Ex.P10. P.W.2- Dr.Anbalagan has assessed the disability at 90%. Considering the evidence of P.W.1 and P.W.2 and considering Ex.P2, P3, P8 to P10, it is decided that the claimant sustained 90% disability. Considering the age of the claimant and considering the fact that the right hand of the claimant was amputated, the Tribunal fixed the functional disability at the ratio of 100%, which is reasonable.

13. On the side of the appellant, it is stated that the Tribunal has added 50% towards future prospects, which is wrong. Only in a death case, future prospects is to be added and not in a injury case. The contention of the appellant is reasonable. Hence, it is decided that the claimant is not entitled to future prospects. The claimant is entitled to Rs.19,44,000/- (Rs.9,000/- X 12 X18) towards loss of income.

14. The Tribunal has awarded Rs.25,000/- towards loss of amenities, Rs.1,00,000/- towards attender charges, Rs.1,78,044/- towards medical expenses, Rs.5,000/- towards extra nourishment, which are all reasonable. The compensation for pain and sufferings is enhanced to Rs.1,00,000/- and a compensation of Rs.10,000/- is awarded towards transport expenses.



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15. The total compensation is calculated as follows:-

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Loss of income	:	Rs. 19,44,000/-
loss of amenities	:	Rs. 25,000/-
attender charges	:	Rs. 1,00,000/-
medical expenses	:	Rs. 1,78,044/-
pain and suffering	:	Rs. 1,00,000/-
extra nourishment	:	Rs. 5,000/-
Transport expenses	:	Rs. 10,000/-
		
Total compensation	:	Rs.23,62,044/-
		

16. After deducting 10% (Rs.2,36,204/-), towards contributory negligence, the claimant is entitled to Rs.21,25,840/- as compensation.

17. This Appeal is partly allowed. No costs.

(i) The compensation is reduced from Rs.32,34,044/- to Rs.21,25,840/-.

(ii) The appellant - Transport Corporation, is directed to deposit the entire compensation of **Rs.21,25,840/-** (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



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order. Excess amount, if any, shall be refunded to the appellant – Transport Corporation.

(iii) On such deposit being made, the first respondent herein / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

24.03.2023

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

1.The Motor Accidents Claims Tribunal/
Additional Sub Court,
Karur.

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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Pre-delivery Judgment made in
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24.03.2023