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C.M.A.Nos.2766/2021 & 545/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2766 of 2021

and

Civil Miscellaneous Appeal No.545 of 2022

and

Civil Miscellaneous Petition No.3861 of 2022

C.M.A. No.2766 of 2021

Ajith

... Appellant / Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai – 2.

... Respondent / Respondent

C.M.A. No.545 of 2022

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai – 600 002.

... Appellant / Respondent

Vs.

S.Ajith

... Respondent/Respondent



C.M.A.Nos.2766/2021 & 545/2022

Common Prayer Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Common Award and Decree dated 13.11.2019 passed in M.C.O.P.No.6487 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Special Court, Chennai.

For Appellant in CMA.No.2766/2021
& Respondent in CMA No.545/2022 : Mr.S.Ravikumar

For Respondent in CMA No.2766/2021
& Appellant in CMA No.545/2022 : Mr.Anton Dhanasekaran

COMMON JUDGMENT

Two separate appeals have been filed by the Transport Corporation – respondent as well as claimants respectively, challenging the quantum of compensation awarded to the claimant in MCOP No.6487 of 2015, dated 13.11.2019, on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Chennai.

2.For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 06.03.2015 at about 9.30 hours he was travelling as a passenger in a Transport Corporation Bus bearing Route No.56-C towards Tondayarpeth, Chennai. While the bus reached near



ESI Hospital, on the speed breaker Kummalamman Koil Street, the driver of the bus driven the same in a very rash and negligent manner due to impact, the claimant / petitioner fell down from the bus. Due to the accident, the claimant sustained grievous injuries. Immediately, the claimant was admitted in to the Hospital and after discharged, he has come forward with the Claim petition claiming compensation of Rs.20,00,000/- by invoking Section 166 of the Motor Vehicle Act.

4. The Transport Corporation has contested the claim on the ground that the claimant was not sustained injury due to the accident as alleged by him and they also disputed the quantum of compensation awarded by the Tribunal under various heads. Hence prays to dismiss the same.

5. The Tribunal after considering the evidence placed on record has held that the claimant has travelled in the food board of the bus and thereby, he has contributed to the negligence. The Tribunal has further held that the driver of the bus negligently driven it, which resulted in causing the injury to the petitioner. Accordingly, negligence was fixed to the extent of 60% on the claimant and 40% on the Transport Corporation. Further the Tribunal has



quantified the compensation and awarded compensation after deducting 60% negligence a sum of Rs.53,600/- along with interest at the rate of 7.5% per annum from the date of filing of petition till the date of realisation.

6. Aggrieved over the fixing of negligence as well as quantum of compensation, the Transport corporation has filed CMA No.545 of 2022 and for seeking enhancement of compensation, the claimant has filed CMA No.2766 of 2021.

7. The learned counsel for the appellant/Transport Corporation submitted that it is admitted case that the claimant has negligently travelled in the foot board of the bus and invited the accident thereby, fixing the liability on the part of the Transport Corporation to the extent of 40% is not proper and prays to set aside the same.

8. Per Contra, the learned counsel for the claimant has submitted that due to over crowding, the claimant was forced to travel in the foot board of the bus and the bus driver was also negligently driven the bus, which resulted in causing the accident hence the driver of the bus only responsible for the accident and thereby, fixing of 60% contributory negligence on the



part of the claimant is not proper and prays to set aside the same. He further submitted that the compensation awarded under few heads i.e., loss of income and loss of earning capacity is also not proper and prays to modify the same. He further claimed for enhancement of compensation awarded under all other heads also.

9. I have considered the rival submissions made on both sides and also perused the records.

10. On careful perusal of the order passed by the Tribunal as well as the recitals made in the First Information Report-Ex.P1, Accident Register-Ex.P3 and Discharge Summary-Ex.P5, shows that First Information Report itself was lodged after 4 months from the date of accident. In the Accident Register-Ex.P3 and Discharge Summary-Ex.P5 shows that, at the time of admission in the hospital, the claimant has categorically stated that he sustained injury by travelling in the foot board of the bus and fell down on 06.03.2015 at about 9.30 hours near G.B Road, Kummalamman Koil Street, ESI Hospital. In the cross examination also, it has also been elicited that the claimant was travelled in the foot board of the bus. After appreciating this



evidence and also after accepting the Accident Register, the Tribunal has held that the bus driver has negligently driven the bus however, the negligence act committed by the claimant is greater than the negligence act committed by the driver of the bus. This Court finds there is no reason to interfere with the said finding since it has been based on the records and evidence. It is admitted case that the claimant was travelled in the foot board of the bus and there is also no evidence to show that the bus was over crowded. Before this Court, both sides have not substantiated their contentions to disagree with the view taken by the Tribunal. Elaborate reasons given by the Tribunal is not based on any perverse finding. Under the said circumstances, I am inclined to confirm the percentage of negligence fixed on both sides and the same is hereby confirmed.

11. With regard to the quantum of compensation, the Tribunal taking into account the evidence given by P.W.2-Doctor, who had assessed the disability sustained by the claimant and Disability Certificate marked as Ex.P10, accepts that the claimant has sustained disfigurement on his leg as well as amputation of two toes. In the Discharge Summary also, it has been categorically stated by the Hospital that, where the claimant has taken treatment and the claimant has sustained partial amputation of right big toe



and partial amputation of third toe. The photographs regarding the injury sustained by the claimant have also been produced before the Tribunal and I have also carefully analysed the same. The injuries sustained by the claimant is scheduled injury under the Employees' Compensation Act. The percentage of negligence fixed for both of them have been properly assessed by P.W.2-Doctor, while assessing disability however, the Tribunal, instead of treating the disability as, functional permanent disability, treating as a partial permanent disability and awarded compensation of Rs.3,000/- per injury. The Tribunal has also separately awarded Rs.30,000/- under the head disfigurement. I am of the view that since the injury sustained by the claimant is a scheduled injury and the compensation shall be permissible by adopting multiplier method. The photographs of the injury sustained by the claimant also shows that this injury would definitely cause certain disability and leads to loss of earning capacity. Since the claimant has lost his two toes due to the accident, which also resulted in total severe disfigurement of leg, I am of the view that the compensation shall be paid under the head loss of earning capacity by adopting multiplier method. As per the Apex Court Judgment in ***Sarla Verma and others Vs. Delhi Transport Corporation and others*** [2009 ACJ 1298 SC : 2009 (6) SCC 121], the multiplier is fixed as



'18' by considering the age of the deceased at 18 years at the time of the accident.

12. The Tribunal has fixed the monthly income of the claimant as Rs.9,000/- per month. Considering the nature and date of accident, I am of the view that the same is proper and no need for interference and the same is hereby confirmed. Accordingly, the following calculations made for loss of earning capacity: $[9000 \times 12 \times 18 \times 4\%] = \text{Rs.}77,760/-$.

13. The claimant is also entitled for compensation under the head future prospects. As per the Judgment of the Apex Court in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*** 40% compensation to be awarded under the head future prospects. Accordingly, a sum of Rs.31,104/- [40% of 77760] is awarded under the head future prospects.

14. With regard to the compensation awarded under the head disfigurement is concerned, I am of the view that the same is proper and the same is hereby confirmed. Since compensation awarded under the head loss



of earning capacity, the compensation awarded separately by the Tribunal under the head partial loss of income is hereby rejected. The Tribunal has also awarded compensation under various other heads and the same are just and proper and the same are hereby confirmed.

15. Accordingly, the Award passed by the Tribunal under various heads is hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Partial Loss of Income	Rs.27,000/-	---	Set aside
2.	Loss of Earning Capacity	Rs.12,000/-	Rs.77,760/-	Enhanced
3.	Disfigurement	Rs.30,000/-	Rs.30,000/-	Confirmed
4.	To and fro expenses and Other miscellaneous expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
5	Pain and Suffering	Rs.30,000/-	Rs.30,000/-	Confirmed
6	Loss of Amenities	Rs.30,000/-	Rs.30,000/-	Confirmed
7	Future Prospects	---	Rs.31,104/-	Granted
	Total Less 60% liability	Rs.1,34,000/- Rs.80,400/-	Rs.2,03,864/- Rs.1,22,318/-	
	Total Compensation	Rs.53,600/-	Rs.81,546/-	Enhanced by Rs.27,946/-

16. In the result,



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(i) The Appeal filed by the claimant in C.M.A.No.2766 of 2021 is partly allowed and the compensation awarded by the Tribunal at Rs.53,600/- is hereby enhanced to Rs.81,546/- [Rupees Eighty One Thousand Five Hundred and Forty Six only] along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any.

(ii) The Appeal filed by the Transport Corporation in C.M.A.No.545 of 2022 is dismissed.

(iii) The Transport Corporation is directed to deposit the amount now awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.6487 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Chennai. On such deposit, the appellant is permitted to withdraw the amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. The Transport Corporation is permitted to withdraw the amount, if any lying in



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the credit of M.C.O.P.No.647 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Chennai. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation.

(iv) There shall be no order as to costs in the present appeal.

(v) Consequently, the connected miscellaneous petition stands closed.

13.11.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal Special Judge,
Motor Accident Claims Tribunal, Chennai.
2. The Section Officer,
V.R.Section, High Court of Madras.

K. RAJASEKAR, J.

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