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CMA.Nos.790 of 2023 and 1844 of 2022
and C.M.P. No.13322 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CMA.Nos.790 of 2023 and 1844 of 2022
and
C.M.P. No.13322 of 2022

C.M.A. No.790 of 2023

Ganesan

... Appellant

VS.

The Managing Director
Tamilnadu State Transport Corporation Limited,
No.12, Ramakrishna Road, Salem - 636 007.

... Respondent

C.M.A. No.1844 of 2022

The Managing Director
Tamilnadu State Transport Corporation Limited,
No.12, Ramakrishna Road, Salem - 636 007.

... Appellant

VS.

Ganesan

... Respondent

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 12.04.2022 in M.C.O.P.852/2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.



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Appearance in C.M.A. No.790 of 2023

For Appellant : Ms.Ramya V.Rao

For Respondent : Mr.D.Nitin

Appearance in C.M.A. No.2236 of 2023

For Appellant : Mr.D.Nitin

For Respondent : Ms.Ramya V.Rao

COMMON JUDGMENT

The appellant in C.M.A.No.790/2023 is the claimant in M.C.O.P.852/2018 on the file of the Motor Accident Claims Tribunal, Salem, and the appellant in C.M.A.No.1844/2022 is the respondent in the said petition.

2. The claimant filed the above said petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road accident that occurred on 23.02.2018.



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3. The brief case of the claimant is as follows :

On 23.02.2018, the claimant was riding his two wheeler bearing Registration Number TN-52-K-6980 with one Kandhan as a pillion rider on Adaiyur - Jalagandapuram road. When he was nearing Adaiyur Raja Koil turning, a speeding bus bearing Registration Number TN-30-N-0121 belonging to the Tamilnadu State Transport Corporation hit his two wheeler, as a result of which, the claimant and the pillion rider sustained injuries. While the pillion rider died on spot, the claimant was rushed to hospital.

4. According to the claimant, the rash and negligent driving of the driver of the bus was the cause of the accident and therefore, the Transport Corporation is liable to pay compensation to him.

5. The appellant in C.M.A.No.1844/2022 contested the claim petition by filing its counter.



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6. The Tribunal, vide its orders dated 12.04.2022, fastened negligence on the part of the driver of the bus bearing Registration Number TN-30-N-0121 and the rider of the two wheeler in the ratio 50:50 and awarded compensation of Rs.2,24,276/- (50% of the award amount i.e. Rs.4,48,552/-) to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

7. Aggrieved over fastening negligence on the part of the driver of the bus and also questioning quantum of compensation awarded by the Tribunal, the Tamilnadu State Transport Corporation Limited filed appeal in C.M.A.No.1844/2022 and the claimant filed appeal in C.M.A.No.790/2023 seeking enhancement of compensation.

8. Heard Ms.Ramya V.Rao, learned counsel for the claimant and Mr.D.Nitin, learned counsel for the Tamilnadu State Transport Corporation.



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Negligence

9. It is seen from the records that FIR (Ex.P1) and final report (Ex.P10) were filed against the claimant before the Judicial Magistrate No.II, Mettur for the offences punishable under Sections 279, 304(A) IPC. However, the claimant in his evidence had stated that the driver of the bus was rash and negligent in driving his vehicle. The accident took place in a curved road and there was a head-on collision between the bus and the two wheeler. The Tribunal after considering the evidence adduced on both sides had fixed negligence on the part of the driver of the bus and the claimant in the ratio 50:50.

9.1. It is pertinent to point out that the criminal court records are not binding on the Motor Accident Claims Tribunal and it has to independently assess the evidence. The manner of accident clearly shows that the driver of the bus was also rash and negligent in driving his vehicle and therefore, the Tribunal was right in fastening negligence on the part of the driver of the bus and the two wheeler in the ratio 50:50.



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Quantum

10. A perusal of the records shows that the claimant had sustained the following injuries :

1. Fracture left proximal tibia
2. Crush injury left foot

Dr.Arun (P.W.3) assessed the partial permanent disability of the claimant as 40%. However, the Tribunal reduced it to 30%. Since there is no functional disability, the Tribunal fixed a sum of Rs.5,000/- per percentage of disability and awarded a sum of Rs.1,50,000/- towards partial permanent disability. The accident took place in the year 2018. Considering the same, a sum of Rs.7,000/- per percentage of disability is awarded. The Tribunal was wrong in reducing the percentage of disability to 30%, especially, when the doctor who gave treatment to the claimant has assessed the partial permanent disability as 40%. Therefore, a sum of Rs.2,80,000/- (7000 x 40) is awarded towards partial permanent disability.



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10.1. In the claim petition, it is contended that the claimant was aged about 31 years and was a mason earning a sum of Rs.21,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.7,500/-. The accident took place in the year 2018. Considering the age of the claimant and the year of accident, this Court is of the opinion that fixing notional monthly income of the claimant as Rs.10,000/- would meet the ends of justice. On account of the accident, the appellant would not have been in a position to attend to his regular work atleast for six months. Thus, a sum of Rs.60,000/- (10,000 x 6 = 60,000) is awarded towards loss of income. The following tabular column would show the amount awarded by the Tribunal and the amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Pain and sufferings	40,000/-	40,000/-
2.	Loss of income	45,000/-	60,000/- (10,000 x 6)



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S.No	Heads	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
3.	Medical bills	1,27,552/-	1,27,552/-
4.	Transportation charges	15,000/-	15,000/-
5.	Extra nourishment	15,000/-	15,000/-
6.	Attender's charges	15,000/-	15,000/-
7.	Damages to clothes	1,000/-	1,000/-
8.	Loss of amenities	40,000/-	40,000/-
9.	Partial permanent disability	1,50,000/-	2,80,000/- (7,000 x 4)
TOTAL		Rs.4,48,552/- (after deducting 50% contributory negligence Rs.2,24,276/-)	Rs.5,93,552/- (after deducting 50% contributory negligence Rs.2,96,776/-)

11. Thus, the compensation awarded by the Tribunal is hereby enhanced to Rs.2,96,776/- that would carry interest at the rate of 7.5% per annum.



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12. In the result,

- i. C.M.A.No.790 of 2023 is partly allowed and C.M.A.No.1844 of 2022 is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. The compensation awarded by the Tribunal is hereby enhanced to Rs.2,96,776/-.
- iii. The Tamilnadu State Transport Corporation Limited, Salem, is directed to deposit the enhanced award amount i.e. Rs.2,96,776/- (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 within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.852/2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.



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iv. On such deposit being made, the claimant is permitted to withdraw the same with accrued interest and costs, after following due process of law.

25.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
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To

1.The Motor Accident Claims Tribunal,
Special Sub Court No.I, Salem.

2.The Managing Director
Tamilnadu State Transport Corporation Limited,
No.12, Ramakrishna Road, Salem - 636 007.

3.The Section Officer,
VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

mtl

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