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Civil Miscellaneous Appeal No.1355 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1355 of 2024
and CMP No.12111 of 2024

The Managing Director,
Tamil Nadu State Express Transport Corporation,
No.2, Thiruvalluvar House,
Pallavan Salai,
Chennai 600 002

... Appellant

Vs.

1. K.Sathanantham

2. S.Ramamoorthi

3. R.Chandrasekaran

4. The Managing Director,
TNSTC, (Kumbakonam Division)Ltd.,
Periyamilaguparai, Regional office,
Collectorate Office,
Thiruchirapalli.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2019 made in M.C.O.P.No.723 of 2017 on the file of Motor Accident Claims



Civil Miscellaneous Appeal No.1355 of 2024

Tribunal (Special Subordinate Judge Court, Erode).

For Appellant : Mr.K.Kathiresan
For Respondents : Mr.S.P.Yuvaraj for R1
Mr.C.Senapathi for R4

JUDGMENT

The Tamil Nadu State Express Transport Corporation has filed this appeal, aggrieved by the award passed by the Motor Accident Claims Tribunal (Special Subordinate Judge Court, Erode) in M.C.O.P.No.723 of 2017 dated 30.09.2019.

2. The 1st respondent, who is the claimant filed a claim petition on the ground that on 02.05.2017, he was travelling as a passenger in the bus belonging to the 4th respondent herein at Trichy to Chennai National Highways and at about 4.00 a.m, the driver of the bus belonging to the appellant corporation drove the vehicle in a rash and negligent manner and he rammed on the bus in which the appellant was travelling. As a result of which, the claimant suffered fracture injuries in both thighs – right thigh femur bone broken and mal united – right knee cap movement



reduced by 40 % and he underwent treatment as an in patient for nearly 10 days and at which point of time, two operations were performed. The doctor assessed the disability at 50% and the Medical board assessed the disability at 42%.An FIR came to be registered in Crime No.299 of 2017 against the driver of the bus belonging to the appellant corporation. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the bus belonging to the appellant corporation. Having rendered such a finding, the Tribunal proceeded to determine the compensation payable at Rs.9,50,000/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of earnings	Nil
2.	Transportation to Hospital	8,000/-
3.	Extra Nourishment	8,000/-



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Sl. No.	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
4.	Attendar Charges	8,000/-
5.	Future Medical expenses	Nil
6.	Damages for clothes and Articles	2,000/-
7.	Medical expenses	1,48,000/-
8.	Pain and sufferings	50,000/-
9.	Permanent Disability and loss of Earning power	7,26,000/-
	Total	Rs.9,50,000/-

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.

4. Questioning the quantum of compensation awarded by the Tribunal, the appellant insurance company has filed the present appeal.

5. Heard Mr.K.Kathiresan, learned counsel for the appellant and Mr.S.P.Yuvaraj, learned counsel for 1st respondent and Mr.C.Senapathi, learned counsel for 4th respondent.

6. This Court carefully considered the submissions made on either side and the materials available on record.



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7. This Court also carefully went through the award passed by the Tribunal.

8. Learned counsel for appellant insurance company submitted that the claimant was admittedly travelling in the bus belonging to TNSTC and there was certainly contributory negligence on the part of the driver of TNSTC.

9. The Tribunal had dealt with this issue and on carefully going through the award, it is seen that the Tribunal has taken note of the evidence of PW1 and Ex.P1, R1 and also totality of the circumstances of the case. It is seen that the Driver of the bus belonging to the Appellant Corporation pleaded guilty before the criminal Court and paid the fine. This would mean that the driver has admitted to the commission of the offence under section 279 and 337 of IPC. In such an event, there is no question of attributing negligence against the driver of the bus belonging to Tamil nadu State Transport Corporation. If the driver of the bus belonging to the appellant corporation had contested the final report,



there is some meaning in going into the issue of contributory negligence based on the evidence. Once the driver has admitted to the guilt, it only means that he admitted to the entire negligence and therefore, there is no need for the Tribunal to go into the issue of contributory negligence which stand will run contrary to the stand taken by the driver of the bus belonging to the appellant Corporation in the criminal case. Therefore, this Court does not find any ground to interfere with the negligence / liability that was fixed by the Tribunal.

11. The next issue pertains to the quantum of compensation. The counsel for the appellant submitted that the Tribunal ought not to have applied the multiplier method in this case and only per percentage method must have been adopted.

12. The injuries sustained by the appellant has already been extracted supra. PW3 - Doctor had deposed that the orbit bone of the left thigh was broken and later, it was reunited. That apart, due to the serious injuries sustained, the claimant has difficulty in standing, bending forward and also in doing any hard work. The injuries certainly will result



in some percentage of functional disability and loss of earning power. The Tribunal has fixed 42% disability which is on the higher side. This Court is inclined to reduce the same to 30%. If so, the loss of income would be:

$$\begin{aligned}\text{Loss of Income} &= 8,000 \times 12 \times 30\% \times 18 \\ &= 5,18,400/-\end{aligned}$$

13. Insofar as the compensation under the head of pain and suffering is concerned, the Tribunal has granted Rs.50,000/-. In the instant case, the claimant has underwent treatment as an in patient for nearly 10 days and two operations were performed, considering the seriousness of the injuries sustained, this Court is inclined to fix the compensation under the head of pain and suffering as Rs.1,00,000/-. Insofar as the compensation fixed under the other heads are concerned, it does not require the interference of this Court.

14. In the light of the above discussion, this Court modifies the compensation in the following manner:



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Sl. No.	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of earnings	Nil
2.	Transportation to Hospital	8,000/-
3.	Extra Nourishment	8,000/-
4.	Attendar Charges	8,000/-
5.	Future Medical expenses	Nil
6.	Damages for clothes and Articles	2,000/-
7.	Medical expenses	1,48,000/-
8.	Pain and sufferings	1,00,000/-
9.	Permanent Disability and loss of Earning power	5,18,400/-
	Total	Rs.7,92,400/-

15. The compensation awarded by the Tribunal at Rs.9,50,000/- is reduced to Rs.7,92,400/-. The appellant Transport corporation is directed to deposit the reduced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



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In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

Motor Accident Claims Tribunal (Special Subordinate Judge Court,
Erode)

N.ANAND VENKATESH, J.



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