



C.M.A.No.2491 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2491 of 2023

and

Cros.Obj.No.89 of 2023

and

C.M.P.No.23147 of 2023

CMA.No.2491 of 2023

Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam

...Appellant

Vs

R.Vignesh

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 02.01.2023 passed in MCOP.No.63 of 2021, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagapattinam and may be pleased to dismiss the claim for compensation.



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For Appellant : Ms.M.Rohini

For Respondent : Mr.M.Lokesh

Cros.Obj.No.89 of 2023:

R.Vignesh

...Appellant

Vs

Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation in the decree and judgment dated 02.01.2023 passed in MCOP.No.63 of 2021, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagapattinam by allowing this cross objection.

For Appellant : Ms.M.Rohini

For Respondent : Mr.M.Lokesh



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COMMON JUDGMENT

The appeal in CMA.No.2491 of 2023 has been filed by the Transport Corporation challenging the negligence fastened by the Tribunal vide judgment dated 02.01.2023 in MCOP.No.63 of 2021.

2. The Cross Objection No.89 of 2023 has been filed by the claimant challenging the both the negligence and quantum of compensation awarded by the Tribunal vide judgment dated 02.01.2023 in MCOP.No.63 of 2021.

3. The case of the claimant is that on 01.07.2019, when the claimant was riding his pulsar bearing Registration No.TN-51-AJ-6098 at ECR Road, a Government bus bearing Registration No.TN-68-N-0204 came in a rash and negligent manner and dashed against the petitioner, due to which, he had sustained grievous injuries. Considering all the aspects the Tribunal had awarded the following compensation:

<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
1	Permanent disability	4,50,000
2	Medical Expenses	10,000
3	Loss of Income	4,23,360
4	Pain and Sufferings	1,00,000



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<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
5	Extra Nourishment	60,000
6	Transportation	25,000
7	Attender's Charges	1,00,000
8	Mental agony	10,000
9	Loss of Amenities	50,000
10	Loss of Marital Life	1,00,000
	Total	13,28,360

4. Further, the learned counsel for the claimant would submit that the Tribunal had fixed the contributory negligence against the rider of the two-wheeler as 20% and against the driver of the bus as 80%. However, he would contend that since the accident was occurred purely due to the fault on the part of the driver of the bus, it is not fair to fasten 20% liability against the rider/claimant. In this regard, he referred the deposition of PW1, who is none other than rider of two-wheeler, wherein he had stated that the accident was occurred due to the rash and negligent driving of the bus driver. Therefore, he requests this Court to fasten the entire liability against the driver of the bus and to set aside the 20% contributory negligence fixed by the Tribunal against the rider of the two-wheeler.



5. Per contra, the learned counsel appearing for the Transport Corporation would submit that the rider as well as the pillion rider had consumed alcohol and rode the two-wheeler in a rash and negligent manner, due to which the accident was occurred. However, without considering the aforesaid aspect, the Tribunal had fixed 80% contributory negligence against the driver of the bus and hence, he requests this Court to re-determine the same. In this regard, he referred to Ex.P2 and Ex.P3, wherein it has been stated that at the time of admission at Hospital, both the rider and pillion rider had consumed alcohol. Further, in the FIR also, it has been stated that the rider and the pillion rider had consumed alcohol and came in a rash and negligent manner, which ultimately results in the accident. Hence, he would contend that in the absence of any independent witness or evidence, it would be proper to fix the contributory negligence as 50:50. However, without considering the said aspect, the Tribunal had fastened 80% negligence against the driver of the bus and 20% against the rider of the two-wheeler, which is not just and fair and thus, he requests this Court to re-determine the contributory negligence.



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6. Heard the learned counsel for the claimant and the Transport Corporation and also perused the materials available on record.

7. On perusing the documents and evidences, it appears that in his deposition, PW1 has stated that the accident was occurred due to the rash and negligent driving of the bus driver. However, the details with regard to the place of the accident and as to who crossed the median, has not been mentioned therein.

8. That apart, the driver of the bus was also examined as DW1, wherein he had stated that the rider of the two-wheeler had consumed alcohol and rode the two-wheeler in a rash and negligent manner, due to which the accident was occurred. In order to prove the consumption of alcohol, Ex.P2 and Ex.P3 were produced, wherein it has been stated that at the time of admission at Hospital, the claimant had consumed alcohol.

9. In view of the above, it appears that the deposition of PW1 and DW1



appears to be contrary to each other and no independent evidences or eye witnesses were available at the time of accident. Under these circumstances only, the Tribunal had fixed the contributory negligence in the ratio of 80:20. In the present case, there is no dispute with regard to the occurrence of accident. However, due to the lack of oral and documentary evidences, it is not known as on whose negligence the accident was occurred.

10. When two vehicles were involved in an accident and no proper evidence available with regard to the fixation of negligence, the proper and right course would be to fix the contributory negligence as 50:50. In such view of the matter, this Court is of the view that the cause for inviting the accident would be more on the part of the rider of the two-wheeler, since he had consumed alcohol and hence, it would be proper to fix the contributory negligence as 60% against the rider of the two-wheeler and 40% against the driver of the bus. However, considering the amputation of the left leg of the claimant, this Court is inclined to fix the contributory negligence as 40% against the rider of the two-wheeler and 60% against the driver of the bus. Accordingly, the contributory negligence against the driver of the bus and rider



of the two wheeler is modified to the ratio of 60:40 instead of 80:20.

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11. As far as the quantum is concerned, the learned counsel for the claimant would submit that the accident was occurred in the year 2019 and the Tribunal had fixed a sum of Rs.7,000/- as notional income of the deceased and awarded a sum of Rs.4,23,360/- towards loss of income by applying the multiplier method. Further, it appears that the Tribunal had also awarded a sum of Rs.4,50,000/- towards permanent disability. In general, if the loss of income is awarded by applying the multiplier method and by adding future prospects, it has to be considered as a comprehensive amount towards the loss of income due to permanent disability. In such view of the matter, it is not right course to award compensation separately for “permanent disability” and “loss of income”.

12. That apart, for the accident which was occurred in the year 2019, the Tribunal had awarded the compensation towards loss of income by fixing the notional income as a sum of Rs.7,000/-, which is on lower side. Hence, this Court is inclined to fix a sum of Rs.14,000/- as notional income of the claimant. Further, since the right leg was amputated due to the accident, the claimant,



who was Dying Master, cannot carry out his avocation and day-to-day activities and the disability was assessed as 90% by the Medical Board. In such view of the matter, this Court is inclined to take 70% as functional disability. Accordingly, by adding 40% future prospects and by applying 18 as multiplier, the loss of income would be calculated as follows:

$$\text{Rs.14,000/- (notional income) + Rs.5,600/- (40\% future prospects) * 18 (multiplier) * 12 (months) * 70\% (functional disability) = Rs.29,63,520/-}$$

13. Therefore, the compensation towards loss of income stands enhanced from a sum of Rs.4,23,360/- to Rs.29,63,520/-. Since this Court awarded the compensation towards loss of income by applying multiplier method and by adding future prospects, the compensation of a sum of Rs.4,50,000/- awarded towards permanent disability is set aside.

14. Further, it appears that no amount was awarded under the head Future Medical Expenses for fixing the artificial leg. Hence, this Court is inclined to award a sum of Rs.1,00,000/- towards Future Medical Expenses. With regard to all the other heads, the compensation awarded by the Tribunal appears to be just



and reasonable. Hence, the same stands confirmed.

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15. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No</i>	<i>Particulars</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Permanent disability	4,50,000	Nil
2	Medical Expenses	10,000	10,000
3	Loss of Income	4,23,360	29,63,520
4	Pain and Sufferings	1,00,000	1,00,000
5	Extra Nourishment	60,000	60,000
6	Transportation	25,000	25,000
7	Attender's Charges	1,00,000	1,00,000
8	Mental agony	10,000	10,000
9	Loss of Amenities	50,000	50,000
10	Loss of Marital Life	1,00,000	1,00,000
11	Future Medical Expenses	Nil	1,00,000
	Total	13,28,360	35,18,520

16. Therefore, the amount awarded by the Tribunal is modified as a sum



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of Rs.35,18,520/-. Accordingly, the award amount stands enhanced from a sum of Rs.13,28,360/- to Rs.35,18,520/-. In all other aspects, the award of the Tribunal stands confirmed. Since this Court fixed the contributory negligence towards the claimant as 40%, the Transport Corporation is directed to deposit the award amount after deducting 40% contributory negligence (Rs.14,07,408/-) Hence, the Transport Corporation shall deposit a sum of Rs.21,11,112/-.

17. In the result, the Civil Miscellaneous Appeal and the Cross Objection are Partly Allowed and the Transport Corporation is directed to deposit a sum of Rs.21,11,112/- along with interest and costs, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.63 of 2021 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagapattinam. Further, the claimant shall pay necessary Court fee, if any, on the enhanced compensation. Thereafter, the Tribunal is directed to transfer the award amount to the bank account of the claimant by way of RTGS, within a period of 3 weeks from the date of deposit and from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant,



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whichever is earlier. No costs. Consequently, the connected miscellaneous petition is also closed.

14.02.2024

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order
nsa

To:

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Nagapattinam.



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KRISHNAN RAMASAMY,J.

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