



C.M.A.No.1916 of 2023 and
Cross Objection No.19 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.1916 of 2023

and

C.M.P.No.18577 of 2023

and

Cross Objection No.19 of 2024

C.M.A.No.1916 of 2023:

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

.. Appellant

Vs.

1. K.Stalin
2. B.Kaviarasan
3. T.Kalairasan

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, pleaded to set aside the Decree and Judgment dated 31.03.2023 passed in M.C.O.P.No.38 of 2021, on the file of the Motor Accident Claims Tribunal, The Chief Judicial Magistrate, Nagapattinam.

For Appellant : Mr.C.Senapathi
For R1 : Mr.Ma.P.Thangavel



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Cross Objection No.19 of 2024:

K.Stalin

.. Cross Appellant

Vs.

- 1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam.
2. B.Kaviarasan
3. T.Kalairasan

.. Respondents

Prayer: This Cross Appeal is filed under Order 41 Rule 22 of C.P.C, pleaded to set aside the 10% Contributory Negligence fixed on the part of the injured and to enhance the compensation in the Judgment and decree made in MCOP.No.38 of 2021, on the file of MACT/Chief Judicial Magistrate at Nagapattinam dated 31.03.2023 by allowing this cross objection with interest and cost.

For Cross Appellant	:	Mr.Ma.P.Thangavel
For R1	:	Mr.C.Senapathy

JUDGMENT

The Transport Corporation has filed the present appeal before this Court against the award passed by the Motor Accident Claims Tribunal/The Chief Judicial Magistrate, Nagapattinam, in M.C.O.P.No.38 of 2021 dated 31.03.2023.



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2. The claimant was traveling as pillion rider in a two wheeler on 29.05.2020 at Thiruvarur-Nagapattinam Main Road. Apart from the claimant there was yet another pillion rider in the two wheeler. At about 06.00 p.m., when the two wheeler was proceeding near Azhiyur Thiruvassakulam, the offending vehicle which was a bus belonging to the appellant corporation was driven in a rash and negligent manner and it was coming in the opposite direction and it dashed on the two wheeler. The claimant sustained crush injury on his right leg and there was also Grade III compound injury and fracture both bones on the right leg. The claimant underwent treatment as an inpatient for nearly 25 days and he was operated upon and his right leg was amputated above knee. The medical board assessed the disability of the claimant at 80%. 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 the oral and documentary evidence, came to a conclusion that the driver of the bus can be attributed only with 90%



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negligence and 10% contributory negligence was attributed against the two wheeler on the ground that three persons were travelling in the two wheeler.

4. The Tribunal having rendered the above finding proceeded to fix the total compensation of Rs.15,35,400/- under various heads as follows:-

Sl.No.	Compensation Head	Compensation amount (in Rs.)
1	Permanent Disability	Rs.4,00,000/-
2	Medical Expenses	Rs.10,000/-
3	Permanent Loss of Income	Rs.6,80,400/-
4	Pain and Sufferings	Rs.1,00,000/-
5.	Extra Nourishment	Rs.60,000/-
6.	Transport Expenses	Rs.25,000/-
7.	Attender charges	Rs.1,00,000/-
8.	Mental agony	Rs.10,000/-
9.	Loss of amenities	Rs.50,000/-
10.	Loss of Marriage Life	Rs.1,00,000/-
Total		Rs,15,35,400/-



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5.Out of the above compensation, 90% was attributed against the Transport Corporation and the Transport Corporation was directed to pay the compensation of Rs.13,81,860/- with 7.5% interest per annum. The Transport Corporation aggrieved by the award passed by the Tribunal has filed the present appeal questioning both on the ground of negligence as well as the quantum of compensation fixed by the Tribunal.

6.The claimant has filed a Cross Objection in this case in Cros.Obj.No.19 of 2024 and has sought for enhancement of compensation.

7.Heard the learned counsel for the Transport Corporation and the learned counsel for the claimant.

8. This Court has carefully considered the submissions made on either side and the materials available on record and this Court has also carefully gone through the award passed by the Tribunal.



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9. The learned counsel for the Transport Corporation submitted that three persons had traveled in a two wheeler and their breath smelt alcohol and therefore, the contributory negligence must be enhanced. The learned counsel further submitted that the compensation fixed by the Tribunal under various heads are on the higher side.

10. The learned counsel for the claimant submitted that the FIR was registered against the driver of the bus belonging to the Transport Corporation.

11. The learned counsel for the claimant further submitted that the Final Report was also filed before the District Munsif – cum – Judicial Magistrate, Kilvelur and the same was not entertained and it was closed on the ground that it is barred by limitation under Section 468 of Cr.P.C.



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12. The learned counsel further submitted that the Medical Board had assessed the disability at 80% and whereas the Tribunal had taken only 25% whole body and applied the multiplier method. It was further contended that the Tribunal had fixed only a sum of Rs.9000/- towards monthly income which is on the lower side.

13. The first issue to be gone into is with regard to the contributory negligence that was attributed against the rider of the two wheeler. There is no denial of the fact that three persons had traveled in the two wheeler out of which the claimant was one of the pillion rider. The accident had taken place due to head on collision. The driver of the bus examined as RW1 states that the two wheeler crossed the centre median and came to the other side of the road and dashed on the bus.

14. If the accident had taken place in the manner in which the driver of the bus had stated, there was no reason for registering a FIR against the driver of the bus. The Tribunal dealt with these issues in a proper perspective by considering the evidence of PW1, PW2 and RW1 and also the FIR that was marked as Ex.P1.



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15. The Tribunal also took into consideration the fact that the accident register marked as Ex.P2 which made a mention of the claimant's breath smelling alcohol. On an overall assessment, the Tribunal came to a conclusion that 90% negligence can be attributed to the driver of the bus and 10% was attributed against the rider of the two wheeler.

16. This finding of the Tribunal does not require the interference of this Court since it does not suffer from any illegality. The Tribunal had applied the principle of preponderance of probabilities and arrived at the right finding. Therefore, the finding of the Tribunal is sustained.

17. The next issue is with regard to the quantum of compensation fixed by the Tribunal. The accident in this case had taken place on 29.05.2020. The case of the claimant is that he was working as a mason and that he was getting a daily income of Rs.1000/- and thereby he was earning nearly Rs.30,000/- every month. There was no evidence before the Tribunal regarding the occupation or the income earned by the claimant. This Court has already taken note of the crush injury suffered



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by the claimant on his right leg resulting in amputation above knee and that is the reason why the Medical Board had assessed the disability at 80%.

18. Taking into consideration the facts and circumstances of the case and also the disability assessed by the Medical Board, this Court is inclined to fix 60% towards Loss of Earning Capacity.

19. The Tribunal has fixed a sum of Rs.9000/- as Notional Monthly Income and this is clearly on the lower side. This Court is inclined to enhance the Notional Monthly Income at Rs.16,000/- per month. Considering the age of the claimant, 40% can be added towards future prospects. Thus, the total Notional Monthly Income can be fixed at Rs.22,400/-.

20. In the light of the above discussion, the compensation under the head of Loss of Earning Capacity / Disability is calculated as follows:-



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Monthly income fixed	:	Rs.16,000/-
Future prospects to be added	:	40%
Notional Income arrived at	:	Rs.16,000/- + 40% Rs.22,400/-
Multiplier to be adopted	:	18
Loss of Earning capacity Rs.22,400/- X 12 X 18 X 60/100	:	Rs.29,03,040/-

21. The Tribunal has granted compensation under two heads viz., a sum of Rs.4,00,000/- under the head of permanent disability and a sum of Rs.6,80,400/- under the head of loss of earning capacity. Both these heads are quantified and a sum of Rs.29,03,040/- is fixed. The compensation that has been granted under the other heads are reasonable and it does not require the interference of this Court.

22. In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:-



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Sl.No.	Compensation Head	Compensation amount (in Rs.)
1	Medical Expenses	Rs.10,000/-
2	Permanent Loss of Earning Capacity	Rs.29,03,040/-
3	Pain and Sufferings	Rs.1,00,000/-
4.	Extra Nourishment	Rs.60,000/-
5.	Transport Expenses	Rs.25,000/-
6.	Attender charges	Rs.1,00,000/-
7.	Mental agony	Rs.10,000/-
8.	Loss of amenities	Rs.50,000/-
9.	Loss of Marriage Life	Rs.1,00,000/-
Total		Rs.33,58,040/-

23.Out of the above compensation, 90% is attributed against the Transport Corporation and hence, the compensation payable by the Transport Corporation works out to a sum of Rs.30,22,236/-.



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24. The compensation awarded by the Tribunal at Rs.13,81,860/- is hereby enhanced to Rs.30,22,236/-. The Transport Corporation is directed to deposit the enhanced compensation together with interest at 7.5% per annum from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of this judgment, if not already deposited. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

25. In the result, the Civil Miscellaneous Appeal filed by the Transport Corporation is dismissed and the Cross Objection filed by the claimant is partly allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

10.07.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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To

- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Nagapattinam.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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N.ANAND VENKATESH, J.

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