



C.M.A.No..3065 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

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DATED : 13.02.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.3065 of 2023

Saravanan

... Appellant

Vs.

The Managing Director,
M/s.Tamil Nadu State Transport Corporation Ltd.,
Head Office at No.12, Ramakrishna Road,
Salem.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 30.11.2021 made in M.C.O.P.No.307 of 2017 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Salem.

For Appellant : Mr.R.Navaneetha Krishnan

Respondent : Mr.D.Nithin



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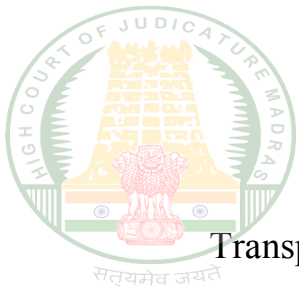
JUDGEMENT

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This instant Appeal is preferred against the award passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Salem (hereinafter, referred to as the 'Tribunal') in M.C.O.P.No.307 of 2017 dated 30.11.2021.

2. On 23.06.2017, at about 19.45 hours, when the claimant was riding a Hero Honda Splendor, bearing Regn.No.TN-30-BW-9694, on the left side of the road at Deevattipatti to Danishpet Main Road near Kadayampatti Urban Co-operative Housing Bank, a bus bearing Regn.No.TN-30-N-0227, belonging to the Tamil Nadu State Transport Cooperation, driven by its driver, came in a rash and negligent manner at high speed and dashed against the claimant, due to the said accident, the claimant sustained grievous injuries all over the body. Hence, the claimant filed a Claim Petition seeking a sum of Rs.50,00,000/- as compensation.

3. The Tribunal, on the basis of oral and documentary evidence arrived at a conclusion that both the driver of the Bus belonging to the



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Transport Corporation and the rider of the two wheeler were cause for the accident and fixed 70% negligence on the part of the driver of the bus and 30% contributory negligence on the part of the rider of the two wheeler, for having driven the vehicle without driving license, and hence, directed the respondent/Transport Corporation to pay a sum of Rs.5,22,875/- with interest at the rate of 9% p.a. from the date of petition till the date of realization as compensation to the claimant and made 30% deduction towards contributory negligence on the part of the claimant.

3.1 The breakup details of the compensation awarded by the Tribunal is as follows:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Compensation amount</i>
1	Pain and Sufferings	Rs.75,000/-
2	Loss of Convenience	Rs.30,000/-
3	Medical Expenses	Rs.3,86,964/-
4	Attender Charges	Rs.25,000/-
5	Disability (Rs.5000 x 30%)	Rs.1,50,000/-
6	Temporary Loss of Income	Rs.70,000/-
7	Transportation	Rs.5,000/-



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Sl. No.	Heads	Compensation amount
8	Extra Nourishment	Rs.5,000/-
	Total	Rs.7,46,964/-
	30% Deduction	Rs.2,24,089/-
	Total compensation awarded	Rs.5,22,875/-

4. Challenging both Liability and Quantum of Compensation, the present Civil Miscellaneous Appeal has been preferred by the appellant/claimant.

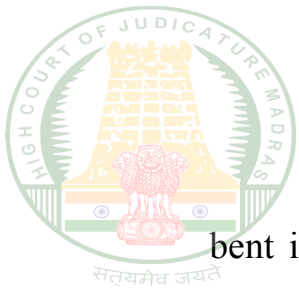
5. Mr.R.Navaneetha Krishnan, learned counsel appearing for the appellant/claimant would submit that though the Tribunal based on oral and documentary evidence has arrived at a categorical finding that the driver of the Bus was the sole cause for the accident, and rightly brushed aside the evidence of R.W.1, relied on by the respondent/Transport Corporation, however, fastened 30% contributory negligence on the part of the rider of the two wheeler, viz., the appellant/claimant for the reason that the appellant/claimant was in possession of driving licence at the time of the



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accident. Therefore, the learned counsel contended that the findings rendered by the Tribunal fixing 30% contributory negligence on the part of the rider of the two wheeler has to be set aside.

5.1 It is also the grievance of the learned counsel for the appellant/claimant that the quantum of compensation awarded by the Tribunal under the head 'Disability', is too low. The learned counsel submitted that at the time of the accident, which occurred on 23.06.2017, the appellant/claimant was aged about 20 years; working as Production Labour (Planning Manager) and earning a sum of Rs.20,000/-, that, due to the accident, he sustained crush injury in both lower limbs and underwent treatment as inpatient from 24.06.2017 to 17.07.2017 and 08.08.2017 to 12.08.2017, totally 29 days; that, though the Tribunal, taking into consideration of the medical expenses incurred by the appellant and awarded a just compensation of Rs.3,86,964/- under the head 'Medical Expenses', as claimed by the appellant, however, committed an error while determining compensation towards Disability, as the appellant/claimant, due to aforesaid disability is not able to walk, or sit freely, as there was a

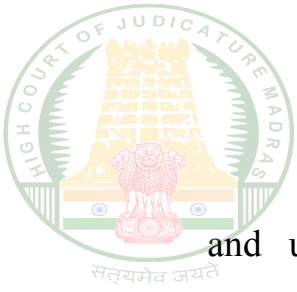


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bent in the left leg lower limb and further, he is also not in a position to continue his avocation, but, the Tribunal, regardless of the same determined compensation by adopting percentage method, instead of multiplier method and fixed a sum of Rs.5,000/- towards per percentage of disability and the disability at 30%, as has been assessed by the Medical Board in Ex.C.1/Disability Certificate, which resulted in awarding such an inadequate sum of Rs.1,50,000/- under the head 'Disability'. Therefore, the learned counsel insisted this Court to re-determine the compensation by adopting multiplier method and to award just and fair compensation under the said head.

5.2 Further, the learned counsel submitted that the award passed by the Tribunal towards 'Temporary Loss of Income' at Rs.70,000/- is also low and the same requires re-determination.

6. Mr.D.Nithin, learned counsel appearing for the respondent/Transport Corporation would submit that that the rider of the two wheeler has not produced the driving licence at the time of the accident,



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and under these circumstances, the Tribunal has rightly fixed 30% contributory negligence against the rider of the two wheeler and fastened 70% liability against the driver of the Bus, and therefore, the findings rendered by the Tribunal with regard to the liability aspect requires no interference. Further, the learned counsel submitted that even the quantum of compensation awarded by the Tribunal under various heads is just and fair and the same also warrants no interference.

7. Heard the learned counsel appearing for the appellant/claimant and learned counsel for the respondent/Transport Corporation and perused the materials available on record.

Liability :-

8. On perusal of the impugned award, it is seen that the Tribunal, while determining the negligence aspect rightly found that the accident occurred due to rash and negligent driving of the driver of the Bus and refused to accept the evidence of R.W.1. Conductor of the Bus, however,



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committed a serious error in fastening 30% contributory negligence on the part of the rider of the two wheeler/appellant for the mere reason that the appellant had failed to produce the driving licence at the time of the accident. Once the Tribunal has rendered a categorical findings that the driver of the Bus was the sole cause for the accident, the failure on the part of the rider of the two wheeler to produce the driving licence, cannot be put against the appellant/claimant, since, while determining the liability aspect, the Tribunal has to find out as to whose negligence has resulted in the accident, and in the present, the driver of the Bus alone was sole cause for the accident.

8.1 Therefore, this Court is of the view that the Tribunal has committed a serious error in the decision making process in fastening 30% contributory negligence against the rider of the two wheeler. Hence, the findings of the Tribunal with regard to the negligence aspect, fixing 70% liability on the driver of the Bus and 30% liability against the rider of the two wheeler are set aside and 100% liability is fixed against the driver of the respondent/Transport Corporation Bus.



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Quantum :-

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9. So far as quantum of compensation awarded by the Tribunal under the head 'Disability' is concerned, it is seen that the Tribunal has adopted percentage method and determined compensation under the said head. However, since it is contended by the learned counsel for the appellant/claimant that the disability sustained by the appellant is permanent in nature, this Court in order to find out the veracity of such statement, directed the appellant/claimant to appear before this Court on 13.02.2024 (i.e. today). Accordingly, the appellant/claimant has appeared before this Court today. It is apparent that there is bent on his left leg below lower limb, due to which, the appellant could not bend his knee, squat, sit cross legged, therefore, as rightly submitted by the learned counsel appearing for the appellant/claimant, a person, having sustained with such deformities is difficult to carry on his job, as Planning Manager, as his nature of work requires physical labour of moving from one place to another place, which, certainly, the appellant cannot do.



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9.1 Therefore, this Court is of the view that the Tribunal ought to have taken into consideration of the aforesaid aspects and awarded compensation by adopting multiplier method instead of applying percentage method. Hence, this Court is setting aside the award passed by the Tribunal with respect to 'Disability' and is proceeding to determine compensation towards the said head based on multiplier method.

9.2 Thus, this Court, taking into consideration of the appellant's age (20 years) avocation (Production Labour/Planning Manager) and income (Rs.20,000/p.m.) and year of the accident (2017), suggested as to whether a sum of Rs.15,000/- shall be fixed as notional monthly income of the injured, to which, learned counsel for the respondent/Transport Corporation would submit that some lesser amount may be fixed as notional monthly income of the injured appellant, which may be below than Rs.13,000/-. Therefore, this Court is inclined to fix a sum of Rs.12,000/- as notional monthly income of the appellant, as the same would be just and reasonable. Insofar as the percentage of disability sustained by the appellant is concerned, though as per Ex.C.1, Disability Certificate, the appellant



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sustained 30% disability, which is no doubt true, a permanent disability, which would persists throughout his lifetime, however, this Court is inclined to take disability at 15% inasmuch as, the compensation awarded by the Tribunal towards Disability is re-determined by this Court by adopting multiplier method.

9.3 Thus, by fixing the notional monthly income of the injured at Rs.12,000/-; adding 40% towards future prospects; applying right multiplier of '18' (since the injured was aged 20 years) and taking disability at 15%, the compensation towards 'Permanent Disability' is calculated as under:-

Monthly income + 40% future prospects x 18 Multiplier x 12 x 15% Disability

$$\text{Rs.12,000/-} + \text{Rs.4,800/-} \times 18 \times 12 \times 15/100 = \text{Rs.5,44,320/-}$$

9.4 Consequently, the sum of Rs.1,50,000/- awarded by the Tribunal under the head of 'Disability' is hereby modified and enhanced to **Rs.5,44,320/-**



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9.5 Since this Court fixed the notional monthly income of the injured at Rs.12,000/-, resultantly, the sum of Rs.70,000/- awarded by the Tribunal under the head of 'Temporary Loss of Income due to Disability' requires to be modified. It is seen from the award that the Tribunal has taken 10 months, as the period, during which, the appellant was not earning for the purpose of awarding compensation under the said head and this Court is inclined to take the same period. Accordingly, the compensation under the said head is determined in the following manner (Rs.12,000/- x 10 months) = **Rs.1,20,000/-**. Hence, the award passed by the Tribunal towards Temporary Loss of Income at Rs.70,000/- is hereby modified and enhanced to **Rs.1,20,000/-**.

9.6 Except the modification made under two heads, viz., i) 'Disability' and ii) 'Temporary Loss of Income', the award of compensation passed by the Tribunal under other heads remain unaltered as the same appear to be just and reasonable.



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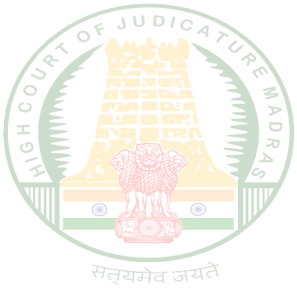
10. Thus, the total compensation payable to the appellant/claimant

under various Heads is as hereunder:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Compensation amount</i>
1	Pain and Sufferings	Rs.75,000/-
2	Loss of Convenience	Rs.30,000/-
3	Medical Expenses	Rs.3,86,964/-
4	Attender Charges	Rs.25,000/-
5	Disability (Rs.5000 x 30%)	Rs.5,44,320/-
6	Temporary Loss of Income	Rs.1,20,000/-.
7	Transportation	Rs.5,000/-
8	Extra Nourishment	Rs.5,000/-
	Total	Rs.11,91,284/-

10.1 Consequently, the total compensation amount of Rs7,46,964/- awarded by the Tribunal is hereby modified and enhanced to **Rs.11,91,284** which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit instead of 9% interest ordered by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed on the following terms:-



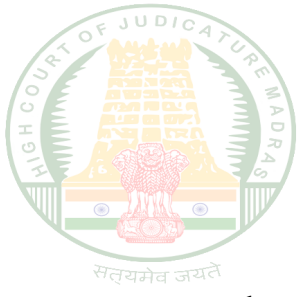
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(i) The respondent is directed to deposit the entire amount

awarded by this Court equally along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

ii) On such deposit being made by the respondent, the Tribunal shall transfer the amount directly to the claimant's respective bank account through RTGS within a period of three weeks thereon, upon which, the respondent/claimant is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

iii) It is made clear that since this Appeal has been filed with a delay of 405 days, the appellant/claimant shall forgo the interest for the delay period.



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iv) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any.

v) There shall be no order as to costs.

13.02.2024

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To

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



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Krishnan Ramasamy,J.,
sd

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13.02.2024