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C.M.A.No.3473 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3473 of 2021

P.Ramesh

...Appellant

Versus

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,,
Salem – 636 007.

...Respondent

Prayer:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award passed in Judgment and Decree dated 26.07.2019 made in MCOP No.1003 of 2016 on the file of MACT/Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.M.Lokesh

For Respondent : Mr.D.Nitin

JUDGMENT



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This Civil Miscellaneous Appeal is filed by the Claimant seeking enhancement of compensation and also to set aside the finding that he has contributed towards the accident, rendered in the Award passed in MCOP No.1003 of 2016 on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Namakkal.

2. The Claimant herein has sustained injuries while riding a two wheeler on the Namakkal to Tiruchengode Main Road on 21.11.2014 in front of Government Higher Secondary School at Nallipalayam. According to him, while he was riding a two wheeler at about 8.52 PM, on the Left Hand Side of the Road, a transport corporation bus belonging to the respondent came from behind and dashed against the two wheeler which caused multiple grievous injuries. He was admitted to the hospital and thereafter after discharged from the hospital, he filed petition for seeking compensation for a sum of Rs.15,00,000/- by invoking Section 166 of the Motor Vehicles Act.

3. The respondent – transport corporation contested the claim on the



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ground that the claimant has contributed to the accident by suddenly changing the track in the middle of the road. The Transport Corporation has also disputed the injury, disability and income of the claimant.

4. The Tribunal based on the evidence placed on the record has held that the claimant has also contributed to the accident to an extent of 40% , the Tribunal quantified and awarded a sum of Rs.1,22,460/- with interest @ 7.5 % from the date of relief till the date of realization. Aggrieved over the contributory negligence fixed on the claimant and also for enhancement of compensation, this appeal has been filed by the Claimant. The Transport Corporation has not filed any appeal against the Award.

5. The learned counsel for the claimant submits that there is no evidence placed on record to show that the claimant has contributed to the accident and without any evidence purely on the basis of recitals in the First Information Report, the Tribunal has held that the claimant has contributed to the accident to an extent of 40%. Hence, the same is liable to be set aside. Further he has also stated that the Tribunal has not properly awarded



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compensation and rejected the compensation claimed under the head “Disability.” Compensation awarded under other heads are also on the lower side and prays to enhance the same.

6. The counsel for the Transport Corporation submits that the driver of the bus was examined by them and his evidence is more probable than the evidence of PW1/claimant and considering the recitals in the First Information Report and other connected materials, the Tribunal has rightly fixed the contributory negligence and also awarded just compensation.

7. I have considered the submission of both sides and perused all the available materials on record.

8. To prove the contributory negligence, cogent evidence is required and without cogent or specific evidence to prove the accident, no contributory negligence could be proved. In **Meera Devi & Anr. Vs. Haryana Road Transport Corporation & Ors.** 2014 (1) TN MAC 456 (SC), the Hon'ble Apex Court has held as under:-



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“10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased Scooterist. In the absence of any cogent evidence to prove the Plea of Contributory Negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the Compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.”

9. In K.Anusha and Ors. Vs. Regional Manager, Shriram General

Insurance Co.Ltd., 2021 SCC Online SC 3339, in para No.13 was observed as follows:-

*“13. In **Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi**, this court quoted a decision of the High Court of Australia v. Austrust Ltd. to hold that “...where, by his negligence, one party places another in a situation of danger, which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty”. In fact, the statement of law in **Swadling v. Cooper**, that “the mere failure to avoid the collision by taking some extraordinary precaution, does not in itself constitute negligence.” was also quoted with approval by this court. Therefore, we are compelled to reverse the finding of the Tribunal and the High Court on the question of contributory negligence.”*

10. In this case, evidence placed on record shows that while he was



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riding his two wheeler from Namakkal to Tiruchengode Main Road, on 21.11.2014 at about 8.15 pm, near Nallipalayam, Govt. Higher Secondary School, the bus was driven by its driver in a negligent manner and dashed on the rear side of the two wheeler, which resulted in causing severe injuries to the claimant. In the First Information Report shows that a criminal case was also registered against the driver of the bus.

11. Ex.P1 the First Information Report, reads that the claimant's wife Vijaya Lakshmi lodged the complaint stating that while her husband was returning home on his two wheeler, a cyclist namely Radhakrishnan suddenly crossed the road in the main road and to avoid the accident with the cyclist, her husband turned his vehicle on the Right Hand Side of the road, which resulted in dashing of the bus against the two wheeler of her husband. The driver of the bus has deposed that he was driving the Transport Bus from Namakkal to Erode and while reaching near the Government Higher Secondary School at about 8.45 pm, the cyclist was riding in front of the bus, behind the cyclist the claimant was riding his two wheeler and suddenly to avoid hitting on the cyclist, the rider of the two wheeler fell



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down and dashed on the bus, which resulted in causing injuries to the claimant. He further stated that the police have also investigated the case and closed it as a “Mistake of fact”.

12. The First Informant, who lodged the FIR is not the eye witness but she is only a hearsay witness and based on the intimation given to her, she lodged the complaint. The evidence of RW1 shows that in order to avoid accident, the claimant tried to move the vehicle on the Right Hand Side of the road, which resulted in accident. In umpteen number of judgments, it has been held that the vehicles running on the road, has to maintain sufficient distance in between and if the same is not maintained, the vehicle driver who was hit on the rear side of the ongoing vehicle is liable for negligent act.

13. The evidence of RW1 shows that while the two wheeler rider was trying to avoid the accident, subsequently fell down from the two wheeler and dashed to the bus. If the bus driver would have maintained sufficient distance to avoid any kind of contingencies like this, he could have avoided



the accident. It is the specific case of the claimant that the bus driver driven it, in a rash and negligent manner and dashed against the two wheeler. There is no evidence placed on record to show that the two wheeler has contributed to the negligence to an extent of 40%. and he invited the accident.

14. The Exp1 FIR also reads, that while was trying to avoid accident, the bus driver dashed the two wheeler, which shows that the case of the claimant is more probable than the case of the respondent. Hence this Court is of the view that the contributory negligence fixed on the part of the claimant by the Tribunal is not proper and the same is liable to be set aside.

15. As far as the quantum of compensation is concerned, the claimant has relied on the three discharge summaries, which shows that on 22.11.2014, the claimant was diagnosed with :- (i). Head Injury, (ii). Right Lung Contusion with hemopneumothorax with Rib fracture-1-9, Complex C-2 fracture. He has undergone impatient treatment from 22.11.2014 to



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25.11.2014. After discharge, he was immediately admitted as inpatient to another hospital namely G.Kuppuswamy Naidu Memorial Hospital immediately and was discharged on 10.12.2014 and he was diagnosed with Complex C2 fracture, Contusion injuries with multiple fractures, and thereafter he was again admitted to Ganga Medical Centre & Hospital at Coimbatore, there he undergone C2 and C3 anterior surgical discectomy procedure on 13.12.2014 and thereafter he was discharged on 20.12.2014. Once again for the purpose of attending post operative wound inspection, the claimant was admitted on 23.12.2014 and discharged on 10.12.2015. After discharge he was assessed for disability in the year 2019 and his disability was assessed to the extent of 50 % of loco motor disability. After appreciating the above exhibits, the Tribunal is of the view that the claimant has not sustained any functional disability and he has sustained partial disability and awarded compensation by following percentage method and he has been awarded Rs.3000/- per percent of the injury, after reducing the disability to the extent of 30%. The Tribunal has not given any reason for reduction of the same.



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16. The learned Counsel for the claimant submits that the injury sustained by the claimant incapacitated him from doing his earlier avocation as plumber and the claimant is entitled for compensation under the head loss of earning capacity and the same has not been awarded to him by the Tribunal.

17. On careful consideration of the discharge summaries it shows that all the injuries sustained by the claimant, except the Cervical Fracture. The Cervical Fracture in the area of C2 and C3 and are healed. Discharge summary also shows that he was treated in conservative method and no surgeries were undergone by him except for cervical fracture. No other disability has been sustained by the claimant.

18. This Court is of the view that based on this injury the claimant could not contend that he has been prevented from going to his earlier avocation and he has lost the earning capacity. The Tribunal has rightly held that injuries of the claimant resulted in non-functioning disability. However the reduction from 50 % to 40% is not proper and hence this Court modifies



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the disability to the extent of 50 % and he is entitled for **Rs.4000** per percentage of injury **Rs.2,00,000/-** is awarded by this Court under the head disability.

19. The Tribunal after considering the period of impatient treatment has awarded 3 months income, as loss of income. This Court is of the view that the same is to be enhanced to Rs.12,000 X 4 months. Accordingly, the Claimant is entitled for **Rs.48,000/-** under the head loss of income during treatment period. Considering the various injuries, the Tribunal has awarded **Rs.40,000/-** for pain and suffering and it requires no interference of this and the same is hereby confirmed. The claimant is also entitled for enhancement of compensation under the head extra nourishment, and enhanced to **Rs.25,000/-**. The claimant is also entitled to Attender charges which has not been awarded by the Tribunal. Hence **Rs.15,000/-** is awarded by this Court. Compensation awarded under the other heads are confirmed.

<i>Sl.No.</i>	<i>Heads</i>	<i>Lower Court</i>	<i>This Court</i>
1.	Pain and Suffering	Rs.40,000/-	Rs.40,000/-
2.	Permanent Disability	Rs.90,000/-	Rs.2,00,000/-
3.	Medical Expenses	Rs.27,100/-	Rs.27,100/-
4.	Loss of Earning	Rs.27,000/-	Rs.48,000/-



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<i>Sl.No.</i>	<i>Heads</i>	<i>Lower Court</i>	<i>This Court</i>
5.	Extra Nourishment	Rs.10,000/-	Rs.25,000/-
6.	Attender charges		Rs. 15,000/-
7.	Total	Rs.1,94,100/-	Rs 3,55,100/-

20. In the result, this civil miscellaneous appeal is modified and partly allowed and the compensation awarded by the Tribunal at Rs.1,94,100/- is hereby enhanced to **Rs.3,55,100/- [Rupees Three Lakhs Fifty Five Thousand One Hundred Only]** together along with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit. The Respondent-Transport Corporation is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment to the credit of MCOP No.1003 of 2016 on the file of MACT/Chief Judicial Magistrate Court, Namakkal. On such deposit, the appellant(s)/claimant(s) is/are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since



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this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary court fee, if any, on the enhanced compensation. The claimants are not entitled to any interest for default period if any. There shall be no order as to costs in the present appeal.

06.02.2024

Index : Yes/No
Speaking : Yes/No
NCC : Yes/No

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To:

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Namakkal.

2.The Section Officer,
VR Section,
High Court,
Madras.

K.RAJASEKAR,J.

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