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Civil Miscellaneous Appeal No.1507 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1507 of 2024

Radha
S/o.Shanmugam

... Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Pallavan House, Anna Salai,
Chennai - 2.

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.07.2023 made in M.C.O.P.No.6595 of 2019 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.S.Baskar

For Respondent : Mr.A.Vinothraj



The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, in M.C.O.P.No.6595 of 2019, dated 26.07.2023, has filed this appeal.

2. The case of the claimant is that on 16.12.2017, he was travelling in the bus belonging to the respondent transport corporation and at about 20.30 hours, when the bus came near Lakshmiammam Temple bus stop, it was driven in a rash and negligent manner very near to a iron railing, as a result of which the claimant's right hand was seriously injured with fracture shaft of humerus on right. The claimant underwent treatment as an inpatient from 16.12.2017 to 27.12.2017 for twelve days in the Government Stanley Medical College Hospital and underwent a surgery. Thereafter, the claimant was admitted in Government Royapettah Hospital on 06.11.2019 and underwent treatment till 18.11.2019 for 13 days as an inpatient. There, he was diagnosed with united right shaft of humerus fracture of infected wound. Once again, the claimant was admitted in Government Stanley Medical College Hospital and he underwent treatment for five days as an inpatient. Thus, the claimant underwent treatment as an inpatient for totally 30 days. The Medical Board assessed the disability at 10%. It is under these circumstances, the



claimant filed the claim petition seeking compensation.

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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 recklessness on the part of both the driver of the bus as well as the claimant. The Tribunal found that the claimant had kept his hand outside the window bar and hence, when the bus graced over an iron fencing erected on the road, the claimant sustained grievous injuries. Therefore, the Tribunal fixed 50% liability on the transport corporation and attributed 50% negligence on the claimant. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.1,42,000/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability	50,000/-
2.	Loss of Amenities	30,000/-
3.	Pain and Suffering	25,000/-
4.	Attender charges	15,000/-
5.	Loss of Income	11,000/-
6.	Transportation expenses	5,000/-
7.	Nutrition expenses	5,000/-
8.	Damages to clothes	1,000/-
	Total	1,42,000/-



<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
	Less: 50% contributory negligence	71,000/-
	Compensation payable	71,000/-

The above compensation was directed to be paid along with interest at 7.5% p.a.

4. The claimant, aggrieved by the award passed by the Tribunal, has filed the present appeal questioning 50% contributory negligence attributed against the claimant and also the quantum of compensation fixed under various heads.

5. Heard Mr.S.Baskar, learned counsel for appellant/claimant and Mr.A.Vinothraj, learned counsel for respondent transport corporation.

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

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



8. The Tribunal, on considering the evidence of PW-1, came to a conclusion that the claimant was stretching his hand over the window bar outside the bus, as a result, his hand had hit the iron fencing resulting in serious injuries sustained by the claimant. Certainly, there is some element of contributory negligence on the part of the claimant. If the claimant had not stretched his right hand outside the window bar, the accident itself would not have occurred. However, it must also be kept in mind that the driver of the bus cannot drive the vehicle very close to such an iron railing and that too, in a high speed. Therefore, there is certainly an element of negligence on the part of the driver also. Considering the totality of the facts and circumstances of the case, this Court is inclined to fix the negligence at 75% on the driver of the respondent transport corporation and 25% on the claimant.

9. Insofar as the disability is concerned, the Tribunal had adopted per percentage method and had fixed a sum of Rs.5,000/- per percentage. The accident had taken place in the year 2017 and hence, considering the judgment of the Division Bench of this Court in C.M.A.No.3334 of 2021, dated 15.06.2022 [Future General India Insurance Company Limited v. Manivannan and others], this Court is inclined to fix a sum of Rs.7,000/- per percentage. Accordingly, the compensation under the head 'disability'



is fixed at Rs.70,000/- (7000 * 10).

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10. The claimant came up with a case that he was engaged in the avocation as carpenter and was earning an income of Rs.1,000/- per day. The Tribunal had fixed a sum of Rs.11,000/- under the head 'loss of income'. Considering the nature of injury sustained by the claimant, this Court is inclined to award a sum of Rs.20,000/- [10000 * 2] under this head.

11. The claimant underwent treatment as an inpatient for nearly 30 days in three phases and he also underwent one operation. Therefore, this Court is inclined to increase the compensation under the heads 'transportation expenses', 'nutrition expenses' and 'attender charges' to Rs.10,000/-, Rs.25,000/- and Rs.25,000/- respectively.

12. This Court finds that there is no ground to grant compensation under the head 'loss of amenities' at Rs.30,000/- and the same is hereby set aside.

<https://www.mhc.tn.gov.in/judis> 13. For the foregoing reasons, the compensation awarded by the



Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Disability	50,000/-	70,000/-
2.	Loss of Amenities	30,000/-	-
3.	Pain and Suffering	25,000/-	25,000/-
4.	Attender charges	15,000/-	25,000/-
5.	Loss of Income	11,000/-	20,000/-
6.	Transportation expenses	5,000/-	10,000/-
7.	Nutrition expenses	5,000/-	25,000/-
8.	Damages to clothes	1,000/-	1,000/-
	Total	1,42,000/-	1,76,000/-
	Less: contributory negligence	71,000/- [50%]	44,000/- [25%]
	Compensation payable	71,000/-	1,32,000/-

14. The compensation awarded by the Tribunal at Rs.71,000/- is enhanced to Rs.1,32,000/-. The respondent transport corporation is directed to deposit the compensation awarded by this Court, less the

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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 four (4) weeks from the date of receipt of this judgment. Insofar as the enhanced



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compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

04.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
IV Small Causes Court,
Chennai.

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