



C.M.A.(MD)No.823 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.823 of 2013

and

M.P(MD) No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation,
Kudanthai Division-1.

... Appellant/Respondent

-vs-

1. 1.N.Sathya Moorthy

... Respondent/Petitioner

2.R.Natarajan

3.The Branch Manager,
National Insurance Company Ltd.,
Tallakulam, Madurai-2.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.441 of 2004 dated 03.07.2009 on the file of the Motor Accident Claims Tribunal cum I Additional Subordinate Court, Trichirappalli.



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For Appellant : Mr.M.Prakash
For R1 & R2 : No appearance
For R3 : Mr.S.Srinivasa Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal is filed to set aside the order passed in M.C.O.P.No.441 of 2004 on the file of the Motor Accident Claims Tribunal cum I Additional Subordinate Court, Trichirappalli, wherein, the first respondent herein has filed a claim petition for claiming a compensation of Rs.5,00,000/- (Rupees Five Lakhs only).

2. The Tribunal has awarded a sum of **Rs.6,98,800/- (Rupees Six Lakhs Ninety Eight Thousand and Eight Hundred only)** towards compensation with interest at the rate of 7.5% p.a. As against the award passed by the Tribunal, the present appeal has been preferred by the first respondent in the main petition.

3. The brief facts of the averments made in the petition before the Tribunal are as follows:



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On 05.01.2000 at about 07.30 p.m, when the petitioner was riding in a two wheeler bearing Registration No. TN-29-A-6100 as a pillion rider along with his friend who was riding the Motor cycle near Thanjavur to Neetamangalam Road, the driver of the first respondent vehicle bearing registration No.TN-49-N-0790 came in a rash and negligent manner and dashed against the motorcycle. As a result of which, the petitioner and his friend have sustained grievous injuries all over the body. The accident occurred due to the rash and negligence on the part of the driver of the bus. Thereby, he claimed compensation of sum of **Rs.5,00,000/- (Rupees Five Lakhs only)**.

4. The brief facts and counter filed by the first respondent are as follows:

The petition is not maintainable either in law or facts. The respondent denied the age, income and occupation of the claimant and also manner of accident. The driver of the bus drove the bus in slow speed and the rider of the two wheeler, who is the friend of the petitioner drove the same in a rash and negligent manner and dashed against the bus. Hence, the first respondent is not liable to pay compensation to the petitioner and the petition is liable to be dismissed.



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5. The brief facts and counter filed by the third respondent are as follows:

The averments stated in the petition are all false and the petition is not maintainable either in law or on facts. The accident took place only due to the negligence on the part of the driver of the bus. The driver of the two wheeler is no way responsible for the accident and therefore, the third respondent is no way liable to pay compensation to the petitioner.

6. In order to prove the case of the petitioner, the petitioner has examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P.9 and on the side of the respondents no one was examined and no document was marked.

7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of **Rs.6,98,800/- (Rupees Six Lakhs Ninety Eight Thousand and Eight Hundred only)** towards compensation with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization by directing the first respondent/Transport Corporation to pay the amount.



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8. Aggrieved over the award passed by the Tribunal, the first respondent/Transport Corporation has preferred the present appeal on various grounds.

9. The learned counsel appearing for the appellant would contend that the accident was occurred due to the rash and negligence on the part of the rider of the two wheeler. The tribunal has fixed the liability against the driver of the bus and awarded a sum of Rs.5,40,000/- towards permanent disability suffered by the petitioner by adopting the multiplier method in the injury case. The petitioner has only sustained fracture injuries and there is no functional disability. Hence, the order passed by the tribunal is liable to be set aside.

10. The learned counsel appearing for the third respondent would contend that the accident took place due to the negligence on the part of the driver of the bus. Before the tribunal, the petitioner has examined the witnesses and on the side of the respondents, no witness was examined. Taking into consideration of the above, the tribunal has correctly held that the accident took place due to the negligence on the part of the driver of the bus



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and fixed the liability on the appellant. Hence, the third respondent is no way liable to pay the compensation to the petitioner.

11. Even though, the names of the respondents 1 & 2 were printed in the cause list, none appeared on behalf of them.

12. This Court after hearing the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent and perused the records including the order passed by the Tribunal, the point for determination in this appeal is:

(i) Whether the order passed by the tribunal by adopting the multiplier method against the petitioner is sustainable in law or not?

(ii) Whether this appeal has to be allowed or not?

13. In this case, there is no dispute that the petitioner sustained injuries due to the accident. The vehicle of the first respondent was involved in the accident. Already, the Tribunal after considering the evidence of both sides, fastened the liability on the part of the driver of the first respondent and directed the first respondent to pay the award amount. The appeal is filed only



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as against the quantum of the award amount. The tribunal has adopted the multiplier method by taking disability of 50%. According to the petitioner, he has sustained injuries and thereby, he suffered permanent disability of 68%. In order to prove the same, he examined P.W.2, who has given Disability Certificate, Ex.P.8. As per Ex.P.8, the permanent disability of the petitioner is 68%. But, the tribunal without following any basis, reduced the permanent disability from 68% to 50%. Further, there is no functional disability even as per the Disability Certificate. There are only fractures and there is no functional disability. Further, the disability is also the partial disability. Therefore, the trial Court calculated the compensation by adopting the multiplier method is not appropriate one. Hence, the order of the tribunal in respect of adopting multiplier and in respect of reducing the permanent disability from 68% to 50% are liable to be set aside accordingly, the same are set aside.

14. The Doctor, P.W.2 also in his evidence admitted that the fractures sustained in both the legs are reunited. Therefore, there is no functional disability.



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15.1. Considering the nature of injury as per Ex.P.8 (Wound Certificate), this Court fixes a sum of Rs.2,000/- (Rupees Two Thousand only) for 1 % disability and thereby, this Court is inclined to award a sum of **Rs.1,36,000/- (Rupees One Lakh and Thirty Six Thousand only)** towards 68% of permanent disability.

15.2. The trial Court has awarded a sum of **Rs.95,800/- (Rupees Ninety Five Thousand and Eight Hundred Only)** as per Ex.P.5 (Medical Bills). It is fair and justifiable and the same is confirmed.

15.3. The trial Court has awarded a sum of **Rs.30,000/- (Rupees Thirty Thousand Only)** towards Future Medical Expenses. It is fair and justifiable and the same is confirmed.

15.4. The trial Court has awarded a sum of Rs.20,000/- towards pain and suffering. It is not fair and justifiable and the same is enhanced. Hence, this Court is inclined to awarded a sum of Rs **Rs.50,000/- (Rupees Fifty Thousand Only)** towards pain and suffering.



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15.5. The trial Court has awarded a sum of Rs.5,000/- towards Extra Nourishment. It is not fair and justifiable and the same is enhanced. Hence, this Court is inclined to awarded a sum of **Rs.10,000/- (Rupees Ten Thousand Only)** towards Extra Nourishment.

15.6. The trial Court has awarded a sum of **Rs.8,000/- (Rupees Eight Thousand Only)** as per Ex.P.7 (Ambulance Bills). It is fair and justifiable and the same is confirmed.

15.7. The trial Court has not awarded any amount towards Transport Charges. It is not fair and justifiable. Hence, this Court is inclined to awarded a sum of **Rs.10,000/- (Rupees Ten Thousand Only)** towards Transport Charges.

15.8. The trial Court has not awarded any amount towards Attendant Charges. It is not fair and justifiable. Hence, this Court is inclined to awarded a sum of **Rs.10,000/- (Rupees Ten Thousand Only)** towards Attendant Charges.



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16. Accordingly, the award of the Tribunal is modified as follows:-

Sl.No.	Descriptions	Amount
1.	For Permanent Disability a sum of Rs.2,000/- x 68%	Rs.1,36,000/-
2.	Medical Bills as per Ex.P.5	Rs. 95,800/-
3.	Future Medical Expenses	Rs. 30,000/-
4.	For Pain and suffering	Rs. 50,000/-
5.	Extra Nourishment	Rs. 10,000/-
6.	Ambulance Bills as per Ex.P.7	Rs. 8,000/-
7.	Attendant charges	Rs. 10,000/-
8.	Transport expenses	Rs. 10,000/-
	Total	Rs. 3,49,800/-

17. Therefore, the total award of **Rs.6,98,800/- (Rupees Six Lakhs Ninety Eight Thousand and Eight Hundred only)** awarded by the Tribunal is hereby modified and the award amount is reduced to the extent of **Rs.3,49,800/- (Rupees Three Lakhs Forty Nine Thousand and Eight Hundred only)** rounded off to **Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand only)** which shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition, till the date of realization.



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18. In the result, this Civil Miscellaneous Appeal is partly allowed and the award passed by the Motor Accident Claims Tribunal cum I Additional Subordinate Court, Tiruchirappalli, in M.C.O.P.No.441 of 2004, dated 03.07.2009, is modified to the effect that the first respondent/petitioner is entitled for a sum of **Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand only)** towards compensation and the appellant/first respondent is directed to pay the above said amount to the first respondent herein/petitioner within a period of two months from the date of this order. After deposit, the first respondent/petitioner is entitled to withdraw the amount by filing appropriate application before the Tribunal. Excess Court fee if any paid, the same shall be refunded to the first respondent/petitioner. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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NCC : Yes/No
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P.DHANABAL,J.

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To

1. The Motor Accident Claims Tribunal cum I Additional Subordinate Court,
Trichirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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