



C.M.A(MD).No.417 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 23.02.2024

CORAM:

**THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD) No.417 of 2020

Vairamani

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
37, Mettupalayam Road,
Coimbatore-43.

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award dated 17.02.2020 passed in M.A.C.O.P.No.32 of 2016, on the file of the Motor Accident Claims Tribunal (Addl. District Judge), (Full Addl.Charge), Dindigul by allowing this appeal.

For Appellant : Mr.A.Saravanan

For Respondent : Mr.P.Prabhakaran



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ORDER

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Being aggrieved over the award passed by the Motor Accident Claims Tribunal/ (Additional District Judge), (Full Additional charge), Dindigul in M.A.C.O.P.No.32 of 2016, dated 17.02.2020, the claimant has filed the present appeal.

2.The appellant is the claimant in M.A.C.O.P.No.32 of 016 on the file of the Motor Accident Claims Tribunal (Additional District Judge), (Full Additional Charge), Dindigul. He filed the claim petition in M.A.C.O.P.No. 32 of 2016, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs Only) as compensation for the injuries sustained by him. By the award, dated 17.02.2020, the Tribunal awarded a sum of Rs.3,30,000/- (Rupees Three Lakhs and Thirty Thousand only) as compensation along with 7.5% interest from the date of filing of the claim petition.

3.Facts of the case:-

According to the appellant, on 08.10.2015 at about 13.00 hours, he

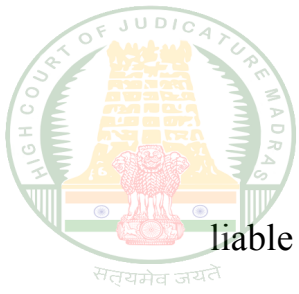


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was travelling as a passenger from Madurai to Dharapuram, sitting at the right side window seat of the bus bearing Reg.No.TN 33 N 2686 and the said bus was driven in a rash and negligent manner near Idayapatti on Dindigul to Oddanchatram Main Road, it suddenly turned to the right side of the road and dashed against the vehicle which was coming from opposite direction, due to which, the appellant's right hand was amputated and he sustained sever injuries all over the body. The appellant was working as a lift mechanic contractor and earning a sum of Rs.25,000/- per month. Due to the accident, he lost his right hand and hence, he is not in a position to work as a lift mechanic contractor. The accident occurred only due to the rash and negligent driving of the driver of the TNSTC bus. Therefore, the appellant filed the claim petition, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs Only) as compensation.

4.The respondent Corporation filed the counter statement and denied all the averments made in the claim petition. The respondent Corporation contended that the driver of the bus is not responsible for the accident. The appellant himself was responsible for the accident, since he was keeping his left hand outside window of the bus and therefore, the respondent is not



liable to pay any compensation to the appellant and hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 was examined and 6 documents were marked as Ex.P1 to Ex.P6. On the side of the respondent Corporation, R.W.1 was examined and Ex.R1 was marked.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and the respondents held that the accident occurred only due to the rash and negligent driving by the driver of the respondent Bus and directed the respondent Corporation, to pay a sum of Rs.3,30,000/- (Rupees Three Lakhs and Thirty Thousand only) as compensation along with 7.5% interest from the date of filing of the claim petition, under the following heads:

<i>Sl. No.</i>	<i>Description</i>	<i>Amount in (Rs)</i>
1	For Disability (85% X Rs.3000)	2,55,000/-
2	For pain and sufferings	20,000/-
3	Medical Expenses	89,640/-



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4	Extra Nourishment	20,000/-
5	Loss of Income due to the accident for 12 months, 12 X Rs.6,000/- = Rs.66,000/-	66,000/-
6	Transport Charges	20,000/-
Total		4,70,640/-
Deduction of 30% negligence on the part of the claimant/appellant		1,41,192/-
Total after Deduction		3,29,448/-

7. Aggrieved against the said award dated 17.02.2020, the appellant/claimant has filed the present appeal seeking enhancement of the award.

8.Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant submits that the appellant's right hand was amputated and hence, the learned Tribunal Judge ought to have adopted the multiplier method and calculated the loss of income by adding the future prospects as per the law laid down by the Hon'ble Supreme Court. He further submits that the Tribunal erroneously fixed the contributory negligence at the rate of 30% on the appellant which is not legally sustainable and hence, he seeks for enhancement of the award.



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WEB COPY 9.Submission of the learned counsel for the respondent:

Per contra, the learned counsel appearing for the respondent Corporation submits that the learned Tribunal, by considering the nature of the accident, rightly fixed the negligence upon the injured claimant/appellant and there was also no evidence to the loss of job and hence, the learned Tribunal Judge has decided not to follow the multiplier method. Only after considering all the aspects, the learned Tribunal Judge granted adequate compensation and hence, he seeks for confirmation of the award.

10.We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent corporation and also perused all the materials available on record.

11.The following points arise for consideration of this appeal:

(I). Whether the learned Tribunal Judge is correct in fixing 30% of contributory negligence on the part of the appellant/claimant for his act of keeping his hand out of the window of the bus?



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(II). Whether the learned Tribunal Judge has committed error in not applying the multiplier method to calculate the loss of income, when the appellant's right hand was amputated?

12.Discussion on the negligence:

On perusal of the award passed by the Tribunal, it is clear that the Tribunal, without any clear evidence on the side of the respondent Corporation fixed 30% contributory negligence on surmise that the claimant/appellant is responsible for the accident. In the considered view of this Court, it is not correct.

12.1.This Court perused Ex.P1 and also the evidence of P.W.1 and R.W.1. It is clear from the evidence that the injured was keeping his elbow out of the window and for that purpose, fixing the contributory negligence of 30% is exorbitant and hence, this Court reduces it to 25%.

13.Discussion on quantum:

It is admitted case that the appellant's right arm was amputated. He specifically deposed in chief examination that he was not continuing his job



of Lift Mechanic Contractor. There was no cross examination on this aspect.

Hence, the evidence of P.W.1 is cogent and trustworthy. The Medical Board assessed 85% of disability. Therefore, his loss of income is assessed as 60%. The learned Tribunal Judge has fixed the notional income as Rs.6,000/-, but, in the considerable opinion of this Court, the same is very low in comparing the evidence of the injured that he was doing the job lift Mechanic Contractor and hence, this Court fixes the income of the injured as Rs.10,000/- and calculate the loss of income as follows:

$$10,000 \times 60/100 \times 12 \times 15 = 10,80,000/-$$

The compensation awarded by the Tribunal under other heads are hereby confirmed.

14.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimant is re-determined as follows:-

<i>Sl. Nos.</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified amount by this Court</i>	<i>Status</i>
1	For Disability (85% X Rs.3000)	Rs.2,55,000/-	Rs.2,55,000/-	Confirmed
2	For pain and sufferings	Rs.20,000/-	Rs.20,000/-	Confirmed



3	Medical Expenses	Rs.89,640/-	Rs.89,640/-	Confirmed
4	Extra Nourishment	Rs.20,000/-	Rs.20,000/-	Confirmed
5	Loss of Income due to the accident for 12 months, (12 X Rs. 6,000) = Rs.66,000/- Note: This Court calculated the loss of income for 15 months (1000 X 60/100 X 12 X 15)	Rs.66,000/-	Rs.10,80,000/-	Enhanced
6	Transport Charges	Rs.20,000/-	Rs.20,000/-	Confirmed
Total		Rs.4,70,640/-	Rs.14,84,640/-	
		Rs.1,41,192/- [deduction of 30% contributory negligence]	Rs.3,71,160/- [deduction of 25% contributory negligence]	Enhanced
Total After Deduction		Rs.3,29,448/-	Rs.11,13,480/-	Enhanced

15. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded in M.A.C.O.P.No.32 of 2016, on the file of the Motor Accident Claims Tribunal (Additional District Judge), (Full Additional Charge), Dindigul, dated 17.02.2020 is hereby enhanced from Rs.3,30,000/- to Rs.11,13,480/- with interest of 7.5%. The respondent Corporation is directed to deposit the modified award amount with accrued interest and costs, less any amount if already deposited, within a period of



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one month from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. There shall be no order as to costs.

[V.B.S.J] [K.K.R.K.J.]
23.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sbn

To

- 1.The Motor Accident Claims Tribunal,
Additional District Judge,
Full Additional Charge, Dindigul.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.c



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V.BHAVANI SUBBAROYAN, J.
AND
K.K.RAMAKRISHNAN, J.

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