



C.M.A.(MD) No.586 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 31.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.586 of 2023

E.Mahalingam
Appellant

...

VS.

1.Jagankumar,
2.Tamilnadu State Transport Corporation Limited,
Through its General Manager,
Nagercoil.
3.Oriental Insurance Company Ltd.,
Through its Branch Manager,
Nagercoil Head Post Office Junction,
Nagercoil, Agasteeswaram Taluk,
Kanyakumari District.
Respondents

...

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1973, against judgment and decree dated 07.03.2023 in M.C.O.P.No.99 of 2005 on the file of the Motor



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Accidents Claims Tribunal, 2nd Additional Sub Court, Nagercoil.

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For appellant : Mr.C.Sankar Prakash

For Respondents

for R1 : Given up

for R2 : Mr.S.Micheal Heldon Kumar

for R3 : Mr.C.Karthik

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant herein against the award dated 07.03.2023 passed in M.C.O.P.No.99 of 2005, by the Motor Accidents Claim Tribunal/II Additional Sub Judge, Nagercoil, for enhancement of compensation.

2. Heard the arguments of the learned counsel on both sides and perused the records.

3. The case details set out in the claim petition are stated in brief:

On 17.02.1996, while the claimant was driving his Tempo,



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bearing Registration No.TN-74-A-5544, proceeding from Nagercoil to Puliur Kurichi on the left side of the road. When he was nearing Thotiyodu Madam, a bus, bearing Registration No.TN-74-N-0275, which was proceeding from Kaliyakavilai to Kanyakumari, came at a high speed and in a rash and negligent manner, hit on the Tempo of the claimant and thereby, accident occurred. Due to the said impact, the claimant sustained serious injuries and he was admitted as inpatient at Nagercoil Government Hospital. The accident occurred due to the rash and negligent driving of the first respondent/driver. Since the second respondent/Corporation, being the owner of the said vehicle and the claimant's vehicle was insured with the third respondent, all of them are liable to pay compensation.

4. The details of the counter of the second respondent/Tamilnadu State Transport Corporation are stated in brief:

The claimant is put to strict proof of age, avocation and income of the claimant. The manner, in which the accident occurred as stated by the claimant, is denied. As the accident



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occurred due to the negligence of the claimant, the second respondent is not liable to pay any compensation.

5. The details of the counter of the third respondent are stated in brief:

The manner of the accident narrated in the claim petition is correct and the third respondent is not liable to compensate the claimant herein.

6. At trial, to substantiate the details of the claim petition, on the claimant's side, two witnesses were examined and 23 documents were marked. On the respondents side, neither any oral evidence was let in nor any document was marked.

7. The Tribunal, upon consideration, has fastened the liability on the second respondent/Tamil Nadu State Transport Corporation and has granted compensation of Rs.77,030/- without interest under the following heads:

S.No	Description	Amount
1	For medical expenses	Rs.26,030/-



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S.No	Description	Amount
2	For transportation charges	Rs. 500/-
3	For extra nourishment	Rs. 5,000/-
4	For pain and sufferings	Rs.45,000/-
5	For damages to clothes	Rs. 500/-
	Total	Rs.77,030/-

8. For non-granting of the interest, it has been mentioned that the claimant has filed the claim petition in the year 2005, after nine years from the accident and as the claimant protracted the trial, it was disposed of belatedly. Therefore, the claimant was denied the interest.

9. The learned counsel for the appellant/claimant would, vehemently, contend that the claimant suffered fracture in right femur and no amount was granted for loss of income during treatment period and for loss of amenities. He would further contend that the Tribunal did not award interest for the compensation awarded, which is not correct.

10. The learned counsel for the second respondent/Tamil



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Nadu State Transport Corporation would, strenuously, argue that though the accident occurred in the year 1996, the claimant filed the claim petition only in the year 2005. He would further contend that as no Doctor was examined and the disability assessment was not at all made, the Tribunal was right in not granting the amount for loss of income during treatment period.

11. As regards the non-granting of interest, the learned counsel would, strenuously, contend that very unusually, the claimant has filed the claim petition very belatedly and wantonly, a Civil Revision Petition in C.R.P.(PD)(MD) No.2056 of 2008 was filed before this Court and it was kept pending for a long time. Observing these delaying tactics, the Tribunal has rightly not granted the interest, which is correct.

12. From the evidence of P.W.1/claimant, it appears that on account of the accident, he suffered fracture in right femur and he was under treatment at Kanyakumari Medical College Hospital for three days. It has been stated by P.W.1/claimant that he took further treatment at Natesan Pal Hospital for 13 days as inpatient.



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The date of the accident is 17.02.1996. Ex.P2/Wound Certificate is issued by the Kanyakumari Medical College Hospital. Though the claimant has suffered fracture as mentioned supra, the claimant has not taken any steps to assess disability through doctor. However, considering the age of the petitioner and he was said to be working as a driver, he would have taken rest for about four months. P.W.1 has claimed that he was earning Rs.5,000/- p.m., as a driver. Considering the date of accident and the nature of avocation, this Court deems it fit to fix his monthly income at Rs. 2,000/- p.m. Hence, for loss of income for four months, a sum of Rs.8,000/- is awarded. The Tribunal has granted an amount of Rs. 45,000/- for pain and sufferings. For loss of amenities, considering the fact that the accident took place in the year 1996, an amount of Rs.5,000/- is granted.

13. The third grievance of the appellant is that no interest was granted for the compensation by the Tribunal. On a thorough perusal of the entire records, it is pellucid that the accident took place on 17.02.1996, but the claim petition was filed after the lapse of 9 years in the year 2005. Thereafter, the appellant/claimant took



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out an application in I.A.No.540 of 2006 to receive the copy of the receipt (Ex.P21) issued by the Automobile Workshop and it was dismissed by the Tribunal on 18.08.2008. Against which, Civil Revision Petition in C.R.P.(PD) (MD)No.2056 of 2008 was preferred before this Court and later, it was disposed of. The Tribunal has passed the award on 07.03.2023. The claimant has taken so many years to dispose of the claim petition before the Tribunal. For the delay caused, the claimant has to shoulder the responsibility for the same. Therefore, non-granting of the interest by the Tribunal cannot be found faulted.

14. P.W.1 would state that he spent an amount of Rs.1,52,747.60/- to repair his Tempo. To substantiate the same, a copy of the receipt issued by the Automobile Workshop is marked as Ex.P21. It is the contention of the learned counsel for the appellant that the said amount was not granted by the Tribunal, which is incorrect. Ex.P21 is the copy of the receipt which was said to have been issued by the workshop for an amount of Rs. 1,52,747.60/-. Though the learned counsel for the appellant states that despite the strenuous effects taken by the claimant, he could



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not bring the workshop in-charge to prove Ex.P21. Marking and proving of the documents are different. Here, Ex.P1 was said to have been issued by the workshop and as the connected person to Ex.P21 is not examined, it cannot be considered to have been proved. Therefore, the Tribunal was right in not considering Ex.P21 and the arguments put forth by the learned counsel for the appellant is not sustainable in law. The compensation awarded by the Tribunal is re-worked and tabulated as given below:

S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For medical expenses	Rs.26,030/-	Rs.26,030/-	Confirmed
2	For transportation charges	Rs. 500/-	Rs. 500/-	Confirmed
3	For extra nourishment	Rs. 5,000/-	Rs. 5,000/-	Confirmed
4	For pain and sufferings	Rs.45,000/-	Rs.45,000/-	Confirmed
5	For damages to clothes	Rs. 500/-	Rs. 500/-	Confirmed
6	For loss of income during treatment period	---	Rs. 8,000/-	Granted
7	For loss of amenities	---	Rs. 5,000/-	Granted
	Total	Rs. 77,030/-	Rs.90,030/-	Enhanced by Rs.13,000/-

15. In the result,

(i) The Civil Miscellaneous Appeal stands partly allowed. No



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(ii) The compensation awarded by the Tribunal is enhanced from Rs.77,030/- to Rs.90,030/-.

(iii) The second respondent/Tamilnadu State Transport Corporation is directed to deposit the enhanced compensation amount i.e., Rs.90,030/- (less the amount already deposited if any) to the credit of M.C.O.P.No.99 of 2005 on the file of Motor Accidents Claims Tribunal /II Additional Sub Court, Nagercoil, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. The said award amount does not carry interest as ordered by the Tribunal.

(iv) On such deposit being made, the claimant/appellant is permitted to withdraw the award amount, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(v) The claimant/appellant is directed to pay the Court fee for



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the enhanced compensation amount, if required.

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(vi) The Tribunal below shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The Motor Accidents Claims Tribunal, II Additional Sub Judge,
Nagercoil.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

apd

Pre-delivery order made in
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