



C.M.A(MD)No.785 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.785 of 2019

and

C.M.P(MD)No.10144 of 2019

Tamil Nadu State Transport Corporation Kumbakonam,
Rep. by its Managing Director,
Koviloor,
Thirupathur Post,
Karaikudi District.

: Appellant/Respondent

Vs.

1.A.Shanmugavelu

: 1st Respondent/Claimant

2.E.Allirani

3.New India Assurance Company Limited,
Rep. by its Divisional Manager,
Kamarajar Salai,
Madurai District.

: 2nd and 3rd Respondents/
2nd and 3rd Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the order passed in M.C.O.P.No.444 of 2017, on the file of the MACT (Special Sub Court), Madurai, dated 26.06.2019.



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For Appellant : Mr.P.M.Vishnuvarthanan
For R1 : Mr.M.Subramanian
For R2 : No appearance
For R3 : Mr.G.Prabhu Rajadurai

JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN .J.**]

The appellant Transport Corporation, aggrieved by the award passed by the Motor Accident Claims Tribunal (Special Sub Court), Madurai in M.C.O.P.No.444 of 2017, dated 26.06.2019 has preferred this appeal, questioning the quantum of compensation awarded by the tribunal.

2. The factum of the accident and the manner of accident are not in dispute.

3. The appellant Transport Corporation is the first respondent in M.C.O.P.No.444 of 2017, on the file of the Motor Accident Claims Tribunal (Special Sub Court), Madurai. The first respondent herein is the



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claimant. The claimant filed a claim petition in M.C.O.P.No.444 of 2017, claiming a sum of Rs.90,00,000/- (Rupees Ninety Lakhs only) as compensation for the injuries sustained by him in the accident that occurred on 27.02.2017. By the award, dated 26.06.2019, the Tribunal awarded a sum of Rs.29,00,000/- as compensation.

4.Facts of the Case:-

According to the claimant, he was working as conductor in the appellant Transport Corporation. On 27.02.2017 he acted as a conductor in the TNSTC bus bearing Registration registration No.TN-63-N-1306. When the bus was going to Trichy, the driver of the bus drove the vehicle in a rash and negligent manner and dashed against the back side of the loaded lorry belonging to the second respondent bearing Registration No.TN-45-PV-9797. Due to the accident, the claimant sustained multiple injuries. The jurisdictional police has filed the First Information Report in Crime No.22 of 2017. The first respondent conductor claimed compensation of Rs.90,00,000/- in M.C.O.P.No.444 of 2017.

5. The appellant filed a counter contending that the accident occurred due to the negligence of the driver of the second respondent. He



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further stated that the claim petition filed by the claimant is not maintainable, since the injured claimant/first respondent is working under the appellant Transport Corporation, and so he has to file a petition under the Employees Compensation Act. The appellant denied the age, avocation, income of the injured claimant/first respondent and the treatment taken by him. The compensation claimed by the injured claimant/first respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, on the side of the claimant, claimant was examined as P.W.1 and one Ragupathi was examined as P.W.2 and Ex.P1 to Ex.P20 were marked. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and one document was marked as Ex.R1. Ex.C1 was marked as Court document.

7. Finding of the Tribunal:

The Tribunal relying upon the evidence of P.W.1 and P.W.2, R.W.2 and Ex.P1-FIR came to the conclusion that the driver of the appellant Transport Corporation was responsible for the accident and



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awarded compensation of Rs.51,29,000/- to the claimant under the following heads:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income (For Disability)	Rs.46,64,000/-
2	For Pain and suffering	Rs. 30,000/-
3	For nutrition	Rs. 5,000/-
4	For attendant charges	Rs. 10,000/-
5	For cloths	Rs. 2,000/-
6	For transportation	Rs. 5,000/-
7	For Medical Expenses	Rs. 4,13,000/-
Total		Rs.51,29,000/-

Challenging the quantum of compensation awarded by the Tribunal, the present appeal has been filed.

8. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant/Transport Corporation would submit that the Tribunal mechanically awarded compensation without even advertng to the fact that the claimant is an Employee under the Appellant Corporation and his petition filed under Section 163(b) and 166 and 182(a) of MV Act is absolutely not



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maintainable and the only remedy for the claimant is to file petition under Employees Compensation Act, 1923. Tribunal erred in awarding a compensation by calculating 100% loss of earning when he has not accepted the alternative employment and hence, he seeks to reduce the amount.

9. Submission of the learned counsel for the Respondent:

The learned counsel for the first respondent contended that the Tribunal based on the evidence, has awarded compensation. Since his both legs are crushed and his left face near the left eye also marred and hence, the medical Board assessed his disability as 75%. He is unable to continue his work as conductor and also he is unable to continue to any alternative employment due to pain. Therefore, considering the same, the learned Tribunal Judge assessed his Loss of earning capacity as 100%. Therefore, he seeks no interference in the award.

10. This Court considered the rival submissions made by the learned counsel for the appellant and also perused the materials available on record.



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

11.1.Whether the negligence is correctly fixed on the appellant Transport Corporation bus?

11.2.Whether the compensation granted is in accordance with law?

12. Discussion on the negligence:

According to the claimant, the injured person/claimant is working as conductor in the appellant Transport Corporation. On 27.02.2017 he acted as a conductor in the TNSTC bus bearing Registration registration No.TN-63-N-1306. When the bus going to Trichy, the driver of the bus drove the vehicle in a rash and negligent manner and dashed against the back side of the loaded lorry belonging to the second respondent bearing Registration No.TN-45-PV-9797 proceeding in front of the bus. The jurisdictional police has filed the First Information Report in Crime No.22 of 2017. Generally, the vehicles going behind should keep sufficient distance from the vehicle in front of them. The accident happened only due to the negligence of the appellant corporation bus driver. R.W.1/driver of the bus also admitted that final report was filed against



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him and deposed that the lorry proceeding ahead of the bus suddenly applied the break and hence, the bus rammed the left side of the lorry. It is the duty of the bus driver to follow the lorry keeping sufficient distance. Therefore, the learned Tribunal Judge correctly fixed negligence upon the driver of the appellant corporation bus and hence, this Court finds no irregularity or illegality warranting interference in the findings of the Tribunal. Therefore, this Court is not inclined to interfere with the finding of the negligence fixed by the learned Tribunal Judge on the appellant corporation bus driver.

12.1.It is the right of the claimant either to make the claim under the Employees Compensation Act, or under the Motor Vehicle Act. The difference is that in the case of the employees compensation Act, the claimants need not prove the negligence. Under the Motor Vehicle Act, the claimants shall prove the negligence by preponderance of probability. The Hon'ble Supreme Court in the judgment in the case of *National Insurance Company Ltd., Vs. Prembai Patel and others* reported in *2005 (6) SCC 172*, has held that there is no bar to file the claim under the Motor Vehicle Act. The only exemption is that the claimant has no right



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to make claim under both Act. In this case, the claimant made claim only under the Motor Vehicle Act and also proved the negligence on the part of the appellant corporation bus driver. Therefore, the contention of the learned counsel for the appellant that this petition under Motor Vehicle Act is not maintainable cannot be accepted.

13. Discussion on quantum:

At the time of accident, the claimant/injured person was aged about 46 years and also served as Conductor in the appellant Transport Corporation. The learned Tribunal Judge has assessed the loss of earning capacity due to the disability of 75% as 100%. This Court perused the evidence, and the department has offered alternative employment but according to the claimant due to the injuries and the operation in both his legs and also the left side face, he is unable to continue any work. In the said circumstances this Court considering the totality of the injuries and the disability certificate issued by the Medical Board, the learned Tribunal Judge erred in fixing 100% Loss of earning capacity. Therefore, this Court is inclined to reduce the loss of earning capacity from 100% to 75%. The monthly income of the injured claimant is fixed as Rs.23,000/-



by the Tribunal as per evidence of PW2 and Ex.P.20. As per the ***Pranay Sethi case***, adding 30% future prospect and applying the multiplier 13, the calculation is as follows:-

13.1.Calculation of the amount:

$$\begin{aligned} 23000 + 6900 (30\%) &= \text{Rs. } 29,900/- \\ 29900 \times 12 &= \text{Rs. } 3,58,800/- \\ 3,58,800 \times 13 \times 75/100 &= \text{Rs. } 34,98,300/- \\ \text{Loss of Income} &= \text{Rs. } 34,98,300/- \end{aligned}$$

13.2. The award of Rs.30,000/- towards pain and suffering is very low and the same is enhanced to **Rs.1,00,000/-**. Likewise, the amount of Rs.5,000/- towards nutrition is enhanced to **Rs.20,000/-**. The learned Tribunal Judge has not awarded any amount for the disability, hence, this Court inclines to award **Rs.2,25,000/-** for the permanent disability. The tribunal has awarded a sum of Rs.10,000/- for attendant charges which is very low and the same is enhanced to **Rs.20,000/-** and also the Tribunal has awarded a sum of Rs.5,000/- for transport charges which is very low and the same is enhanced to **Rs.10,000/-**. The tribunal has awarded a sum of **Rs.2,000/-** towards cloths and another sum of **Rs.4,13,000/-** towards medical expenses and they are confirmed.



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14.Conclusion:

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

S. No.	Description	Amount awarded by Tribunal (in Rupees)	Amount awarded by this Court (in Rupees)	Award confirmed or modified or enhanced or granted
1.	Loss of income (For disability)	46,64,000/-	34,98,300/-	reduced
2.	For pain and suffering	30,000/-	1,00,000/-	enhanced
3.	For nutrition	5,000/-	20,000/-	enhanced
4.	For attendant charges	10,000/-	20,000/-	enhanced
5.	For cloths	2,000/-	5,000/-	enhanced
6.	For transportation	5,000/-	10,000/-	enhanced
7.	For medical expenses	4,13,000/-	4,13,000/-	confirmed
8	For Permanent Disability	-----	2,25,000/-	granted
Total		51,29,000/-	42,91,300/-	Reduced

15.Accordingly, this Civil Miscellaneous Appeal is partly allowed.

The compensation awarded in M.C.O.P.No.444 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Madurai, dated 26.06.2019, is hereby modified from Rs.51,29,000/- to Rs.42,91,300/-. The appellant / Transport Corporation is directed to deposit the modified award amount with accrued interest and costs, less any amount if already



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deposited, within a period of eight weeks from the date of receipt of a copy of this order. The claimant is entitled to withdraw the modified award amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any. The Tribunal is directed to refund the excess amount, if any, to the appellant / Transport Corporation along with proportionate interest. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
04.03.2024

Index:Yes/No
Internet:Yes/No
am/sbn

To

- 1.The Motor Accident Claims Tribunal
(Special Sub Court), Madurai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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

am/sbn

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and
C.M.P(MD)No.10144 of 2019

04.03.2024