



CMA(MD).Nos.259 and 914 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 18.07.2024

PRONOUNCED ON : 08.08.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.259 & 914 of 2017
and CMP(MD).No.2966 of 2017

CMA(MD).No. 259 of 2017:

Metropolitan Transport Corporation Chennai
Through its Managing Director ...Appellant/Respondent

Vs.

M.GopikannanRespondent/Petitioner

CMA(MD).No. 914 of 2017

M.Gopikannan ...Appellant/Petitioner

vs.

The Managing Director
Metropolitan Transport Corporation
Chennai Limited
Anna Salai, ChennaiRespondent/Respondent



CMA(MD).Nos.259 and 914 of 2017

PRAYER in CMA(MD).No.259 of 2017 :- Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal, set aside the award and decree made in MCOP.No.892 of 2012 dated 10.09.2015 on the file of the Motor Accident Claims Tribunal IV Additional Subordinate Court, Madurai.

PRAYER in CMA(MD).No.914 of 2017 :- Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal with cost and to set aside the order dated 10.09.2015 in MCOP.No.892 of 2012 on the file of the Motor Accident Claims Tribunal IV Additional Subordinate Court, Madurai.

CMA.No.259 of 2017

For Appellant : Mr.P.Prabhakaran

For Respondent :Mr.PT.S.Narendravasan

CMA.No.914 of 2017:

For Appellant : Mr.PT.S.Narendravasan

For Respondent :Mr.P.Prabhakaran

COMMON JUDGMENT

Both the appeals arise out of an award passed in MCOP.No.892 of 2012 on the file of the IV Additional Subordinate Court, Madurai.



CMA(MD).Nos.259 and 914 of 2017

C.M.A(MD).No.259 of 2017 has been filed by the Transport Corporation challenging the non-consideration of contributory negligence and the quantum of award. C.M.A(MD).No.914 of 2017 has been filed by the claimant seeking enhancement of compensation.

2.The injured claimant had contended that while he was driving a two wheeler on 18.02.2012 at about 10.15 p.m, a bus belonging to the transport corporation was driven in a rash and negligent manner and it dashed on the rear side of the two wheeler. Due to the said impact, he had fallen down from his two wheeler and was crushed by the rear right wheel of the bus.

3.The claimant had further contended that he was initially admitted to the Royapettah Government Hospital and later, he was shifted to Government Hospital, Chennai. Thereafter, he had left the Government Hospital, Chennai voluntarily and got himself admitted at Apollo Hospital for his treatment. He had further contended that he is aged about 24 years and he is a M.B.A Graduate working as a medical representative and thereby earning a sum of Rs.13,500/- per month. He had further contended that even after continuous treatment, he has not recovered fully and he is suffering loss of sensation and control of his left arm.



CMA(MD).Nos.259 and 914 of 2017

Hence, he prayed for a compensation of Rs.40/- lakhs.

WEB COPY

4.The Transport Corporation had filed a counter contending that the claimant had made an attempt to overtake the bus in a rash and negligent manner and in the said attempt, he had dashed against the protective barricade placed on the centre median of the road and fell down under the rear wheel of the bus. Therefore, the claimant is solely responsible for the accident. The Transport Corporation had further contended that the injured claimant was not having any valid driving license on the date of the accident. They have also questioned the quantum of compensation as prayed for by the claimant.

5.The Tribunal after considering the oral and documentary evidence let in on either side, relied upon the evidence of PW1 and arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the transport corporation bus. The Tribunal had relied upon Exhibit P17- disability certificate issued by the medical board to arrive at a conclusion that the claimant had suffered 80% of partial permanent disability. The Tribunal had fixed the notional monthly income at Rs.7500/- per month and applied multiplier of 18 and arrived at a sum of Rs.12,96,000/- under the



CMA(MD).Nos.259 and 914 of 2017

head of loss of income. The Tribunal awarded a sum of Rs.50,000/- towards pain and suffering, Rs.5,000/- towards transportation, Rs.20,000/- towards extra nourishment, Rs.20,000/- towards medical attendance charges, Rs.50,000/- towards loss of mental agony, Rs. 50,000/- towards loss of amenities and s.6,10,942/- towards medical expenses. In total, a sum of Rs.21,01,942/- has been awarded. Challenging the said award, the Transport Corporation had filed an appeal and the claimant had also filed another appeal seeking enhancement.

6.The learned counsel for the appellant in C.M.A(MD).No.259 of 2017 had contended that the Tribunal has not properly appreciated the documents filed on the side of the claimant. In fact, those documents would reflect that the claimant had attempted to overtake the bus and he had lost his control and thereafter,he had fallen under the rear wheel of the bus. The Tribunal had erred in fixing the entire negligence upon the driver of the Transport Corporation bus. He had further contended that the Tribunal had erroneously applied the multiplier method and had awarded compensation on the higher side. Hence, he prayed for allowing the appeal. He had further contended that there is no scope for awarding



CMA(MD).Nos.259 and 914 of 2017

of any further compensation and hence, he had prayed for dismissing the appeal filed in CMA(MD).No.914 of 2017 by the claimant seeking enhancement.

7.Per contra, the learned counsel appearing for the claimant had contended that the evidence of PW1 will clearly establish the fact that the bus had dashed against the rear side of the two wheeler which had resulted in the accident. Therefore, the Tribunal was right in mulcting the liability upon the driver of the transport corporation bus. He had further contended that Exhibit P8 is the salary certificate issued by the employer. The Tribunal had erroneously excluded the provident fund deduction from the monthly income of the injured claimant.

8.The learned counsel had further contended that the Tribunal after having applied the multiplier method ought to have added 40% towards future prospects. He had further contended that under the head of pain and suffering and transportation, the compensation amount should have been enhanced. Hence, he prayed for awarding of compensation under the head of loss of marital prospects considering the age of the injured claimant at the time of accident. Hence, he prayed for dismissing the appeal filed by the transport corporation and to allow the appeal filed by



CMA(MD).Nos.259 and 914 of 2017

the claimant.

WEB COPY

9.I have considered the submissions made on either side and perused the material records.

10.The petitioner had contended that he met with an accident on 18.02.2012 at about 10.15 p.m. Immediately he was admitted at Government Royapettah Hospital and thereafter, admitted in the Government Hospital in Chennai. However, those medical records have not been placed before the Court. The petitioner had left the Government Hospital Chennai and got himself admitted to the Apollo Hospital. Exhibit P13 is the medical records of Apollo Hospital Chennai. A perusal of the said medical records would reveal that at the time of his admission, the petitioner has stated that when he attempted to overtake the bus, he had lost his balance and fallen under the rear wheel of the bus. During cross examination, the claimant had admitted, that this fact was recorded by the Hospital on his instruction.

11.It is alleged by the petitioner that the Transport Corporation Bus has dashed against the rear side of his two wheeler. However, the Motor Vehicle Inspector's report to indicate the damages caused to the two wheeler on the rear side has not been marked. Considering the



CMA(MD).Nos.259 and 914 of 2017

admitted fact of the petitioner that he had fallen under the rear right wheel of the bus and the statement of the claimant before the Apollo Hospital, it is clear that the petitioner in his attempt to overtake the bus, has lost his control and fallen under the rear wheel of the bus. In such view of the matter, the entire negligence cannot be mulcted upon the driver of the Transport Corporation. The petitioner is equally responsible for the said accident. Therefore, this Court is inclined to fix the liability upon the Transport Corporation Bus at 60% and the contributory negligence on the part of the claimant at 40%.

12.The Tribunal had fixed the monthly income of the injured claimant at Rs.7500/- based upon Exhibit P15 salary slip. A perusal of the said salary slip indicate that the gross salary of the claimant was Rs.8025/- and after provident fund deduction of Rs.427/-, a net salary was fixed at Rs.7598/-. The Tribunal was not right in excluding the provident fund contribution while calculating the monthly income. Therefore, this Court is inclined to fix the monthly income of the injured claimant at Rs.8000/-. The claimant had appeared before the medical board and a certificate has been issued by the medical board to the effect that the claimant had suffered 80% partial permanent disability.



CMA(MD).Nos.259 and 914 of 2017

Therefore, the Tribunal was right in adopting multiplier method considering the fact that the claimant is a medical representative. In such circumstances, the Tribunal ought to have added 40% towards future prospects. After adding 40% towards future prospects, the monthly income could be fixed at (Rs.8000/- + 40% towards future prospects) Rs.11,200/-. Therefore, the compensation under the head of loss of income is (Rs.11,200/-x12x18x80% towards partial permanent disability) Rs.19,35,360/-

13.In view of the above said deliberations, the award of the Tribunal is re-assessed as follows:

(a).Loss of income	Rs.19,35,360.00
(b).Pain and suffering	Rs. 1,00,000.00
(c).Transport expenses	Rs. 20,000.00
(d)Extra nourishment	Rs. 20,000.00
(d).Attender charges	Rs. 20,000.00
(d).Medical expenses	Rs. 6,10,942.00
(e).Loss of amenities	Rs. 50,000.00

	Rs.27,56,302.00
(f) Less: 40% towards contributory negligence	Rs.11,02,520.00

Total	Rs.16,53,782.00

10.In view of the above said deliberations, the total compensation of Rs.21,01,942/- is hereby modified and reduced to Rs.16,53,782 /-. The



CMA(MD).Nos.259 and 914 of 2017

said amount shall carry interest at the rate of 7.5% per annum from the date of claim petition excluding the period of default, if any. The Transport Corporation is directed to deposit the award amount within a period of 12 weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimant shall be entitled to withdraw the entire award amount along with accrued interest and proportionate cost.

11.In fine, C.M.A.(MD).No.259 of 2017 is partly allowed and C.M.A(MD).No.914 of 2017 is dismissed. No costs. Consequently, connected miscellaneous petition is clsoed.

08.08.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
mas



CMA(MD).Nos.259 and 914 of 2017

To
WEB COPY

- 1.The Motor Accident Claims Tribunal
/IV Additional Subordinate Court, Madurai
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA(MD).Nos.259 and 914 of 2017

R.VIJAYAKUMAR,J.

msa

Pre-delivery Common Judgement made in
C.M.A(MD)Nos.259 & 914 of 2017
and CMP(MD).No.2966 of 2017

08.08.2024