



CMA No.1642 & 1643 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.Nos.1642 & 1643 of 2022
and
CMP No.12250, 12254 & 12255 of 2022

C.M.A.No.1642 of 2022

Andhra Pradesh State Regional Transport Corporation
rep. by its Regional Manager,
Chittoor, Andhra Pradesh ... Appellant

VS

Ramesh,
S/o Appunu ... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act 1988 against the judgment and decree passed in MCOP.No.240 of 2016 dated 28.02.2022 on the file the Motor Accident Claims Tribunal (Subordinate Judge) at Guidyatham.

C.M.A.No.1643 of 2022

Andhra Pradesh State Regional Transport Corporation
rep. by its Regional Manager,
Chittoor, Andhra Pradesh ... Appellant



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VS

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Dinakaran
S/o Ranganathan

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act 1988 against the judgment and decree passed in MCOP.No.147 of 2016 dated 28.02.2022 on the file the Motor Accident Claims Tribunal (Subordinate Judge) at Gudiyatham.

For Appellant
in both the Appeals : Mr.T.Thiyagarajan

For Respondent
in both the Appeals : Mr.L.K.Manjunath

COMMON JUDGMENT

(Judgment of the Court was delivered by J. Nisha Banu, J)

These appeals have been filed by the Transport Corporation against the common judgment and decree dated 28.02.2022 passed in MCOP.No.240 of 2016 and M.C.O.P.No.147 of 2016 respectively by the Motor Accident Claims Tribunal (Subordinate Judge) at Gudiyatham, by which, the appellant Transport Corporation was directed to pay a sum of Rs.27,22,932/- and Rs.13,69,600/- as compensation to the injured claimants respectively.

2. For the sake of convenience, the parties will be referred to as



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per their array before the Motor Accident Claims Tribunal.

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3. The case of the petitioners in the claim petitions is that on 03.03.2016 at about 14.00 hrs, both the petitioners viz., Dinakaran and Ramesh were travelling in a two wheeler bearing Reg.No.TN-23-BU-5423 as pillion rider and rider respectively, from Rajakkal to V.Kota. When they were nearing Bathrapalli Seventh Day Adventist Church, a APSRTC Bus bearing Reg.No.AP-03-Z-0070 came in a rash and negligent manner and hit against the petitioners' two wheeler. In the said accident, both the petitioners sustained grievous injuries and were admitted in Government Hospital, Pernambut. Subsequently, they were referred to Government Hospital, Vellore, where they further took treatment. According to the petitioners, the accident had occurred due to the rash negligent driving of the driver of APSRTC bus. Due to the said accident, they are completely disabled. Before the accident, they were hale and healthy. The petitioner in MCOP.No.147/2016 was working as Tractor Driver and was earning a sum of Rs.15,000/- per month. The petitioner in MCOP.No.240/2016 was doing agricultural work and was also working as Electrician in private sound service and was earning a



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sum of Rs.20,000/- per month. After the accident, they were not able to do any work to maintain their family. Hence, they have filed the claim petitions claiming compensation.

4. The respondent filed a counter in both the petitions denying the manner of the accident. It was stated that the accident had occurred only due to the rider of the two wheeler alone, as the same was driven in uncontrollable speed and dashed against the bus. Therefore, the petitioners are not entitled for any compensation. The owner and the insurance company of the two wheeler are necessary parties and the respondent is not liable to pay any compensation to the petitioners. Further, the claim made by the petitioners is excessive. The age, occupation and income of the petitioners are also denied by the respondent. Therefore, the respondent prayed to dismiss both the claim petitions.

5. In order to prove the case of the petitioners, they examined four witnesses-P.Ws 1 to 4 and marked 20 documents-Exs.P1 to P20. On the side of the respondent, three witnesses- RW1 to RW3 were examined



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and three documents-Exs.R1 to R3, were marked. The Tribunal, based on Ex.P1- First Information Report and the evidence of PW1, P.W3 and Ex.P5-final report, came to the conclusion that the accident had happened due to rash and negligent driving of the driver of the said APSRTC Bus. The rider of the two wheeler did not possess valid driving licence. Therefore, contributory negligence of 10% was fixed on the rider of the motor cycle, i.e., petitioner in MCOP.No.240/2016. Accordingly, the Tribunal awarded a compensation of Rs.27,22,932/- for the petitioner in MCOP.No.240/2016 and Rs.13,69,600/- for the petitioner in MCOP.No.147/2016.

6. Aggrieved by the common award passed by the Tribunal, the Andhra Pradesh State Regional Transport Corporation filed CMA.No.1642/2022 against the award passed in MCOP.No.240/2016 and CMA.No.1643/2022 against the award passed in MCOP.No.147/2016, questioning the liability and quantum awarded by the Tribunal.

7. The learned counsel for the appellant Transport Corporation



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would argue that only the rider of the two wheeler was driven in a rash and negligent manner and hit against the Corporation bus, however learned trial Judge erroneously fixed the liability on the driver of the bus, which is unsustainable. Learned counsel would further state that no salary slips regarding payment has been produced to fix the income of the respondents. Further, he would argue that the learned trial Judge erred in awarding the amount under the head of pain and suffering as well as under permanent disability which requires reconsideration. He would further state that the learned Judge erred in awarding the amount towards future prospects, when the respondents are capable of doing other work, inspite of sustaining 80% and 60% disability respectively, which are not total functional disability, restricting their movements. Therefore, the learned counsel prayed to set aside the award passed by the Tribunal.

8. Per contra, learned counsel appearing for the respondents/claimants would argue that the accident happened due to the rash and negligent driving of the driver of the appellant Corporation bus. The Tribunal, only based on Ex.P1-FIR, and the evidence of P.W.1 and



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P.W.3 had rightly fixed the liability on the part of the driver of the Transport Corporation. As regards the quantum, he would submit that the Tribunal had rightly fixed the disability of the respondents and awarded 40% towards future prospects and the amount awarded under the head of pain and sufferings is also not on the higher side and hence, he would pray that the award passed by the Tribunal need not be interfered with.

9. We have considered the submissions made on either side and perused the materials available on record.

10. The ocular evidence of PW1 and PW3 and the First Information Report clearly established that the accident took place only due to the rash and negligent driving of the driver of the bus, as a result of which, the respondents sustained grievous injuries. Further, the evidence of RW3 and Ex.R3- rough sketch of the accident place also clearly reveal that the accident took place only due to rash and negligent driving of the driver of APSRTC bus. Hence, the Tribunal is right in fixing the liability on the respondent's Corporation side. We are of the opinion that there is no infirmity or irregularity in the said conclusion.



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11. As regards the quantum, admittedly, at the time of accident, the petitioner in MCOP.No.147/2016 was working as a tractor driver and was earning a monthly income of Rs.15,000/-. His employer-PW2 was examined to prove the same. Since the salary certificate was not produced, the tribunal relying on the decision of ***Syed Sadia v. United India Insurance Company (2014 (1) TN MAC 459)***, fixed the income as Rs.7500/-. Ex.P7, the pass book issued by the District Welfare Office for differently able persons had assessed 60% disability. Ex.P12-Medical Board Certificate also had assessed 60% disability and also certified that he has lost his physical function and his movement is totally restricted, who was only 35 years old at the time of accident. Thus, the Tribunal, based on Ex.P7 and Ex.P12, fixed 60% disability and following the decision reported in ***2017(2) TNMAC 609(SC) (National Insurance Company Limited .vs. Pranay Sethi and others)*** added 40% towards future prospects and awarded Rs.12,09,600/- $(10,500 \times 12 = \text{Rs.}1,26,000 \times 16 \times 60/100)$ towards permanent disability, which in our opinion is fair and proper.



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12. Considering the injury sustained by the petitioner, the treatment and surgery undergone by him, the Tribunal awarded Rs.1,00,000/- towards pain and suffering and Rs.25,000/- towards attender charges, Rs.25,000/- towards extra nourishment and Rs.10,000/- transportation charges. We are of the opinion that the amount awarded under the aforesaid heads are reasonable and needs no interference by this Court. Thus, insofar as the petitioner in MCOP.No.147/2016 is concerned, he is entitled for the total compensation of Rs.13,69,600/- as awarded by the Tribunal .

13. Insofar as the petitioner in MCOP.No.240/2016 is concerned, he was earning a sum of Rs.12,000/- per month at the time of accident. To prove the same, he examined his employer PW4-Managing Director of Perfect Engineering and Developers Company and marked Ex.P18- salary certificate and the Tribunal has rightly fixed his monthly income as Rs.12,000/- per month. From Ex.P19- Medical Board Certificate, it is seen that the petitioner has been assessed with 80% disability. Thus, the Tribunal, based on Ex.P19, fixed 80% disability and following the decision reported in **2017(2) TNMAC 609(SC) (National Insurance**



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Company Limited .vs. Pranay Sethi and others), added 40% towards future prospects and awarded Rs.25,80,480/- ($16,800 \times 12 = \text{Rs.}2,01,600 \times 16 \times 80/100$) towards permanent disability, which in our opinion is fair and proper.

14. The petitioner had sustained crushed injury below right knee and undergone right leg below knee amputation. He was admitted in hospital on 03.03.2016 and discharged on 05.05.2016. He had also filed Ex.P15- cash receipt for a sum of Rs.1,50,000/- towards medical expenses. Considering the injury sustained by the petitioner, the treatment and surgery undergone by him, the Tribunal awarded Rs.2,00,000/- towards pain and suffering and Rs.50,000/- towards attender charges, Rs.25,000/- towards extra nourishment, Rs.1,50,000/- for medical bills and Rs.20,000/- transportation charges. We are of the opinion that the amount awarded under the aforesaid heads are reasonable and needs no interference by this Court. The Tribunal has also rightly deducted 10% towards contributory negligence of the petitioner in MCOP.No.240/2016 and awarded a total compensation Rs.27,22,932/- (Rs.30,25,480-3,02,548). Therefore, insofar as the



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petitioner in MCOP.No.240/2016 is concerned, we are of the view that he is entitled for the total compensation of Rs.13,69,600/- as awarded by the Tribunal.

15. In the result, both the Civil Miscellaneous Appeals are dismissed. The compensation awarded by the Tribunal in M.C.O.P.No.147/2016 and MC.O.P.No.240/2016 along with interest and costs are confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The other directions issued by the Tribunal and the mode of payment of compensation remains unaltered. No costs. Consequently, connected Miscellaneous Petitions are closed.

(J.N.B, J.) (R.S.V., J.)
24.01.2025

Index: Yes/No
Speaking/Non speaking order
vsi



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1. The Motor Accident Claims Tribunal
(Subordinate Judge) at Guidyatham.
2. The Section Officer, VR Section,
High Court, Chennai



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J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

vsi

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