



CMA.No.461 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :19.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.461 of 2025

A.Sathyaraj

... Appellant

Vs.

The Managing Director
Metropolitan Transport Corporation Limited
No.2, Pallavan Salai, Chennai-600 002

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to enhance the compensation awarded in the Fair and Decreetal order dated 20.04.2023 passed in M.C.O.P. No. 8098 of 2018 on the file of the Motor Accidents Claims Tribunal, the IV Court of Small Causes Court, Chennai.

For Appellant : Mr.Amar Dineshbhai Pandiya
For respondents : Mr.Anton Dhanasekaran

JUDGMENT

Aggrieved by the quantum of compensation fixed by the Tribunal, the appellant/ claimant has come before this Court by way of this appeal.



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2. According to the claimant, he was travelling in a bus belonging to the Respondent Corporation on 10-07-2016. The driver of the bus had driven the vehicle in a high speed and applied sudden brake. Therefore, the claimant lost his balance and had fallen down from the bus. The driver of the bus proceeded to drive the vehicle and hence, the rear wheel of the bus ran over the legs of the claimant. Therefore, the claimant suffered fracture injury on his right ankle. The claim petition was filed by the appellant seeking compensation of Rs.20 lakhs.

3. The Respondent corporation filed a counter and opposed the claim petition on the ground that the accident had occurred due to the negligence on the part of the claimant and hence, it is not liable to pay any compensation.

4. Before the Tribunal, the claimant was examined as P.W.1 and 9 documents were marked as Exhibit P1 to Exhibit P9. The driver of the bus was examined as RW1. The accident register report was marked as Exhibit R1.



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5. The Tribunal, on appreciation of evidence available on record, came to the conclusion that the claimant also contributed to the accident and fixed 50% contributory negligence on him. The Tribunal awarded a compensation of Rs.4,87,300/-. Not satisfied with the same, the claimant has come before this court by way of this appeal.

6. The learned counsel for the appellant/claimant submitted that the Tribunal, without properly appreciating the evidence of claimant as PW1 and the contents of the FIR, erroneously fixed 50% contributory negligence on the claimant and the same is liable to be set aside. He further submitted that the Tribunal fixed notional income at Rs. 10,000/- per month and the same needs to be enhanced. It is also submitted that as per the disability certificate, Exhibit P7, the disability of the claimant was assessed at 45% by the Medical Board and the same was reduced to 30% by the Tribunal without any justifiable reason.



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7. The learned counsel for the respondent corporation vehemently contended that even in the FIR, it is clearly mentioned that the claimant lost his balance and fell down from the bus and in the absence of anything in the FIR regarding negligence on the part of the driver of the bus, the Tribunal was justified in fixing 50% contributory negligence on the part of the claimant. It is further submitted that the claimant failed to produce any document to substantiate his claim of income and hence, the Tribunal was justified in fixing notional income at Rs.10,000/- per month. It is also submitted that the claimant suffered locomotor disability of 45% in the right leg and the same is converted to whole body permanent disability and hence, disability assessed by the medical board was reduced to 30% by the Tribunal.

8. The Exhibit P1 is the FIR registered by the police on the basis of the complaint given by one Karthik, who happens to be the co-passenger and friend of the claimant. He clearly stated in the FIR that the claimant was travelling in the foot board, lost balance and fell down from the bus. Though the alarm was raised by the co-passenger, without



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heeding to the same, the driver of the bus proceeded to drive the vehicle for some time and then, stopped the vehicle. In the meantime, the rear wheel of the bus ran over the right ankle of the claimant. The driver of the bus was examined as RW1. He clearly deposed that the claimant travelled in the foot board and he fell down from the bus on his own. Exhibit P1, FIR was registered on the basis of the information furnished by the co-passenger, who also happens to be the friend of the claimant. In the FIR, he clearly stated that the claimant travelled in the foot board and he lost the balance and fell down from the bus. It is not the case of the co-passenger that the driver of the bus applied a brake and due to the same, the claimant lost balance and fell down as claimed in the claim petition. Travelling in the foot board itself would amount to negligence on the part of the claimant. From the FIR, it is seen that the claimant has also contributed to the accident. Hence, the Tribunal was justified in fixing 50% contributory negligence on the claimant. The said finding requires no interference by this court.

9. It is claimed by the claimant in the claim petition that he was



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employed as a painter and earning a sum of Rs.750 per day. However, the claimant has not produced any documentary evidence to prove his avocation as well as income. The accident had taken place in the year 2016. Even if there is no evidence to prove the income, this court feels a sum of Rs.15,000/- can be fixed as notional income for the claimant in the absence of any documentary evidence to prove his income. Having regard to the age of the claimant, he is entitled to 40% enhancement towards future prospects. The medical board which examined the claimant assessed the disability at 45%. A perusal of the disability certificate, Exhibit P7 issued by the medical board would indicate that he suffered locomotor disability of 45%. It is claimed by the claimant that he was employed as a painter. Therefore, it is clear that he is engaged in manual labour. The fracture suffered by him and the locomotor disability of 45% suffered in the right ankle of the claimant will have a direct impact on his avocation. Therefore, the Tribunal is not justified in reducing the disability percentage assessed by the medical board to 30%. Therefore, this Court feels that it would be appropriate to apply disability at the rate of 45% as assessed by the



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$$15,000 \times 1.4 \times 12 \times 17 \times 45 / 100 = \text{Rs.19,27,800/-}$$

10. A sum of Rs. 5,000/- awarded by the Tribunal under the head transportation is enhanced to Rs.10,000/-. The compensation awarded under the head damage to clothes is set aside. The amount awarded by the Tribunal under various other heads like pain and suffering, attender charges, loss of amenities, nutritional charges are confirmed. Therefore, the total amount payable to the claimant is Rs.20,49,600/-. Since 50% contributory negligence is fixed on the claimant, after deducting the same, a sum of Rs.10,24,800/- is payable to the claimant as just compensation.

11. In view of the same, the award passed by the Tribunal is modified as follows:-

Sl No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced
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		(Rs)	(Rs)	or granted
1.	Pain and Suffering	40,000/-	40,000/-	Confirmed
2.	Attender Charges	16,800/-	16,800/-	Confirmed
3.	Nutritional Expenses	15,000/-	15,000/-	Confirmed
4.	Transportation Expenses	5,000/-	10,000/-	Enhanced
5.	Disability	8,56,800/-	19,27,800/-	Enhanced
6.	Damage to clothes	1000/-	Nil	Set aside
7.	Loss of Amenities	40,000/-	40,000/-	Confirmed
	Total	9,74,600/-	20,49,600/-	Enhanced by Rs.10,75,000/-
	Less:50%contributory negligence	4,87,300/-	10,24,800/-	
	Net compensation	4,87,300/-	10,24,800/-	Enhanced by 5,37,500/-

12. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,87,300/- is hereby enhanced to Rs.10,24,800/- It is made clear



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that the claimant is not entitled to claim any interest for the delay period of 231 days. The appellant is entitled to interest at the rate of 7.5% per annum (excluding the delay period of 231 days) from the date of filing of the claim petition till the date of realization. The respondent corporation is directed to deposit the enhanced amount along with interest and costs, less the amount already deposited, if any, before the Tribunal within a period of eight weeks from the date of receipt of copy of this judgment. On deposit of the enhanced sum, the appellant/claimant is entitled to withdraw the same along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. No costs.

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Index: Yes/No
Internet: Yes/No
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To

1. Motor Accident Claims Tribunal,



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WEB COPY IV Court of Small Causes Court, Chennai.

2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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