



WEB COPY

CMA No. 1677 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

**CMA No. 1677 of 2020
and C.M.P.No.12353 of 2020**

National Insurance Co Ltd
Branch Office, Matha Complex,
Cna Road, Vaniyambadi,
Vellore Distict - 635 751.

..Appellant(s)

Vs

1. P.Venkatachalam
S/o Palani
Residing At 434-j, Bantharahalli
Jakkasamuthram
Dharmapuri District.

2. M.Thirunavakkarasu,
S/o Mannu Chettiar,
No.2, Gandhi St.,
Tharadaveedu, Katpadi,
Vellore District -632 319

..Respondent(s)

Civil Miscellaneous Appeal is under Section 173 of the Motor Vehicles Act, against the award dated 21-02-2020 made in M.C.O.P.No.531/2016 on the file of the MACT (Special District Judge),Dhamapuri.

For Appellant(s):

Mr.D.Bhaskaran

For Respondent(s):

Mr.S.Ramprabu for Mr.T.Anathasekar for R1
No appearance for R2



JUDGMENT

WEB COPY (Judgment of the Court was delivered by K.RAJASEKAR, J.)

This Civil Miscellaneous Appeal has been filed challenging the award dated 21.02.2020 made in M.C.O.P.No.531 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Judge), Dharmapuri.

2. The appellant/ Insurance Company is the insurer of the lorry bearing registration No.TN 30 U 2917. It is the case of the claimant that he was an alternate driver in the third respondent bus/Transport Corporation. On 21.03.2016, while he was in duty, the bus was driven by the deceased Murali, from Chennai to Krishnagiri. When the bus reached near Sundampatti junction, at about 4.15 a.m., on 22.03.2016, the driver of the lorry bearing registration No.TN 30 U 2917 which was proceeding in front of the bus, suddenly slowed down and turned without any signal, as a result of which, the driver of the bus lost its control and dashed behind the lorry. Due to accident, the deceased/Murali, who drove the bus suffered grievous injuries and subsequently, succumbed and the claimant sustained grievous injuries. Hence, the claimant has come forward with the Claim Petition seeking compensation for a sum of Rs.20,00,000/- by invoking Section 166 of the Motor Vehicles Act, against the owner and insurer of the lorry.



3. The first respondent, owner of the lorry remained exparte before the Tribunal.

4. The appellant/ Insurance Company contested the claim and filed the counter.

5. It is the case of the Insurance Company that the driver of the bus has driven the vehicle negligently and dashed against the ongoing lorry. This incident happened only due to the negligence on the part of the driver of the bus and hence, the insurer of the lorry is not liable to pay compensation to the deceased. The claimant ought to have claimed compensation under the Workman Compensation Act. The Insurance Company is not liable to pay compensation to the claimant and prayed for dismissal of the claim petition.

6. Before the Tribunal, the claimant examined himself as P.W.1 and one Aandi, eye-witness was examined as P.W.2 and marked 15 documents as Exs.P1 to P15. On the side of the respondents, one Nagarajan, who is working in the appellant/Insurance Company was examined as R.W.1 and marked 2 documents as Exs.R1 and R2.



7. After considering the pleadings, oral and documentary evidence, the Tribunal held that in one of the claim petition in M.C.O.P.No.353 of 2016, the claimants therein have contended that the claimant herein/Venkatachalam was driving the bus at the time of accident and the deceased Murali was acting driver travelled in the bus cabin at the time of the accident and the Tribunal therein, came to the conclusion that the said Venkatachalam was driving the Bus. Hence, once again, the said Venkatachalam is not entitled to contend that he has not driven the bus. After a detailed discussion with regard to negligence, the Tribunal herein held that the driver of the lorry is responsible to the extent of 75% of the accident. Similarly it was also held that the driver of the bus has also driven the bus negligently and he is also liable for 25% of the accident and accordingly, the compensation was fixed for a sum of Rs.17,17,000/- and directed both the Insurance Company of the lorry and the Transport Corporation to pay compensation at the ratio of 75:25 respectively.

8. Aggrieved against the award passed by the Tribunal, this present appeal has been filed.

9. The learned counsel for the appellant/ Insurance Company submitted that in the accident, several passengers suffered injuries and they filed separate claim petitions only against the Transport Corporation, claiming that the driver the bus is negligent and there were awards passed against the driver



of the bus. After disposal of the above cases, the driver of the bus as well as the acting driver of the bus had filed two separate Claim Petitions seeking compensation from the owner and insurer of the lorry making false averments as if the driver of the lorry is responsible for the accident. The Tribunal though recorded in his findings that the evidence has been adduced to prove the negligence on the side of the driver of the lorry, without properly appreciating the various criminal records, including the final report filed against the driver of the bus, had fixed the liability on the driver of the lorry to the extent of 75%, which is not proper and prayed to set aside the same. He further submitted that admittedly evidences placed on records to show that the driver of the bus namely one Venkatachalam has negligently driven the vehicle and he is facing a criminal prosecution. He also submitted that the manner in which the accident has occurred itself is sufficient to show that the entire negligence has to be fixed on the driver of the bus. Hence, prayed to set aside the same.

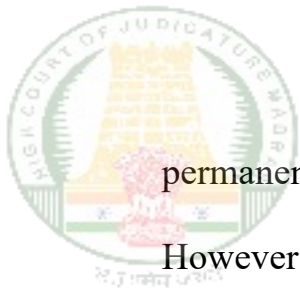
10. As far as the quantum of compensation is concerned, the learned counsel for the appellant/Insurance Company submitted that the petitioner though employed as daily wager and disability has been assessed to the extent of 65% by the Medical Board, he has not lost his earning capacity. Subsequent to the accident, he was made as permanent employee and now, he is continuing his avocation as helper in the Transport Corporation and earning regular income. Hence, there is no loss of income and compensation awarded under the



head earning capacity is not proper and prayed to set aside the same. He further submitted that the compensation awarded under the other heads are also on the higher side and prayed for reduction of the same.

11. In the connected C.M.A.No.1678 of 2020 filed by the appellant herein, the learned counsel for the Transport Corporation therein/owner of the Bus involved in this accident, reiterated the submissions made by the Insurance Company to the effect that the petitioner herein has already been given permanent employment from the month of September 2017 and he has working as a Helper and earning regular income. To that effect, the Transport Corporation has also produced a copy of the appointment order and the other statements regarding the payment of income to the claimant.

12. The learned counsel for the claimant submitted that an eye-witness was examined, more particularly, independent witness was also examined to prove the manner in which the accident was taken place and the Tribunal, after adducing the evidence placed on record and after taking adverse inference for non examination of the driver of the lorry, properly fixed the negligence on both sides as a composite negligence. Hence, they prayed to confirm the award of the Tribunal. As far as the quantum of compensation is concerned, the learned counsel for the claimant submitted that the compensation awarded under the various heads are proper. Though it is stated that the petitioner has given



permanent employment, he was earlier working as conductor-cum-driver.

However, now he has been given employment as only helper and hence, prayed to confirm the award passed by the Tribunal.

13. Considered the submissions of the learned counsel on either sides and perused the materials available on record.

14. It is seen from the records that the witness, P.W.2, spoke about the manner in which the accident was occurred and admittedly there are 9 passengers, who were injured and they also separately filed Claim Petitions only against the driver of the bus in which there are findings recorded that the driver of the bus is responsible for the accident. Further, on careful perusal of the evidence adduced and other connected materials filed, it reveals that the driver of the bus hit the lorry from the back side, though it is stated that the lorry was suddenly turned right hand side for the purpose of taking turn. The evidence has been adduced only to show that the driver of the bus also driven the bus in a high speed without taking any proper precautions. Apart from that, the manner in which the accident had taken place would show that the driver of the lorry is negligently driven the bus and also contributed for the accident. We are of the view that while deciding the negligence in the Motor Vehicle Accident Tribunal claim cases, the role of the Court is to record the findings regarding the negligence for the purpose of fixing compensation and in this case, no contra



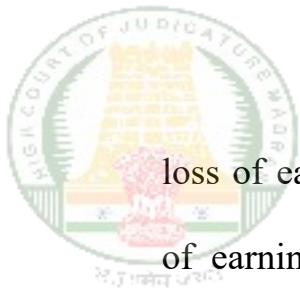
evidence has been adduced from the side of the Insurance Company. Though the Insurance Company relied on the records of the criminal case to show that the entire criminal proceedings were initiated only against the driver of the bus, while deciding the issue of negligence, some evidence is also to be adduced to show that the driver of the lorry is not at all responsible for the accident. However, the evidence available would show that the driver of the lorry slowed down the vehicle in the middle of the road. Similarly, the driver of the bus also driven the bus in a high speed which resulted in the accident. In view of the same, we are of the view that the percentage of negligence fixed on both side is to be modified to the extent of 60:40, i.e., the driver of the lorry is responsible for the accident at 40% and driver of the bus is responsible for the accident at 60%. Accordingly, the negligence and the liability to pay compensation is also modified to such extent.

15. Since we held that with regard to negligence and liability, the claimant/driver of the bus has also contributed to the accident to the extent of 60% and being an employee of the Transport Corporation, he cannot get compensation for his own wrong/contributory negligence, the Insurance Company is directed to pay 40% of the compensation amount as fixed by this Court.



16. With regard to the quantum, it is an admitted case of the claimant that he was employed as conductor-cum-driver. It was only a temporary job and he was earning Rs.305/- per day and it is also stated that he used to get employment only for 20 days in a month. Now the petitioner is engaged as a helper as permanent employee and having regular income. This employment is given not because he sustained injuries or it is not because of reduction of his rank from the driver-cum-conductor to helper. It is the case of the Transport Corporation that they have given him regular employment, since he was eligible for regular employment/permanency, after he was serving for some years. Hence, we are of the view that there is no loss of income suffered by the claimant due to the accident. Therefore, the compensation awarded under the head of loss of earning capacity is not necessary and the same is set aside. However, it is admitted that during the treatment period, i.e., from April 2016 to September 2017, he was not able to earn income, due to his disablement. Considering the same, we are inclined to grant compensation under the head loss of income during the disablement period from April 2016 to September 2017, by fixing the monthly income as Rs.6,100/- (20 days x Rs.305/- per day) for 18 months, which comes to Rs.1,09,800/-, under the head, loss of income.

17. Further, as far as the disability is concerned, the Medical Board has assessed his disability at 65%. Though the claimant claims that his earning capacity was reduced, as we discussed in the earlier paragraph that there is no



loss of earning capacity, instead of granting compensation under the head loss of earning capacity, we are inclined to grant compensation under the head disability suffered by him. Accordingly, for the disability suffered, we grant a sum of Rs.7,000/- per percentage of the injury and hence, the compensation for disability suffered by him comes to Rs.4,55,000/- (Rs.7000/- x 65%). As far as the other heads are concerned, we have gone through the records and since the compensation awarded under the other heads are just and reasonable, the same are confirmed. The compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Compensation of Disability	12,48,000/-	-	Set aside
	Pain and Suffering	50,000	50,000	Confirmed
	Extra nourishment expenses	20,000/-	20,000/-	Confirmed
	Attender charges	5,000/-	5,000/-	Confirmed
	Loss of amenities	50,000/-	50,000/-	Confirmed
	Medical expenses	2,99,000/-	2,99,000/-	Confirmed
	Physiotherapy expenses	15,000/-	15,000/-	Confirmed
	Transport expenses	30,000/-	30,000/-	Confirmed
	Loss of income		1,09,800/-	Granted
	For disability		4,55,000/-	Granted
	Total	17,17,000/-	10,33,800/-	Reduced by Rs.6,83,200/-



18. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.17,17,000/- is modified to Rs.10,33,800/- along with the interest and costs as fixed by the Tribunal. The appellant/Insurance Company is directed to deposit 40% of the compensation amount as fixed by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.531 of 2016. On such deposit, the first respondent/claimant is directed to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

(C.V.K.,J.) (K.R.S.,J.)
15-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

VKR

To

1.The Motor Accident Claims Tribunal,
Special District Judge, Dhamapuri.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

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(1/2)**