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CMA NO.3070 OF 2021**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 08.01.2026****CORAM:**

**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NO.3070 OF 2021
AND
CMP NO.17423 OF 2021**

The Branch Manager
Tamil Nadu State Transport
Corporation (Villupuram) Region
Villupuram Branch
Tindivanam.

... Appellant / Respondent

Vs.

Suresh
No.9, Throwbathi Amman Kovil Street,
Olakkur, Tindivanam Taluk,
Villupuram District.

... Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of Motor Vehicles Act, 1988, praying to set aside the Fair and Decretal Order dated December 21, 2018 passed in M.C.O.P.No.18 of 2014 on the file of the Motor Accident Claims Tribunal (II Additional District Court) Tindivanam.

For Appellant : Mr.S.S.Santhosa Kumar
For Respondent : Mr.M.Krishnamoorthy

J U D G M E N T

(Judgment of the Court was made by R.Sakthivel, J.)



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Feeling aggrieved by the Fair and Decretal Order dated December 21, 2018 passed by 'the Motor Accident Claims Tribunal (II Additional District Court) Tindivanam' ['Tribunal' for short] in M.C.O.P.No.18 of 2014, the respondent therein, namely The Branch Manager, Tamil Nadu State Transport Corporation, Villupuram Branch, Tindivanam, has preferred this Civil Miscellaneous Appeal.

2.For the sake of convenience, hereinafter, the parties will be denoted as per their array before the Tribunal.

PETITIONER'S CASE IN BRIEF:

3.On March 31, 2012, at about 09.30 p.m., the petitioner was riding his Hero Honda motorcycle bearing Registration No. TN-32-T-7612 from Tindivanam towards Chennai. When he reached near Keel Aathanur X Cross Road, a bus bearing Registration No.TN-32-N-2115, belonging to the respondent – 'Tamil Nadu State Transport Corporation' (TNSTC) was proceeding ahead of the petitioner. At that time, the driver of the respondent's bus, without any signal or caution and without any justifiable reason, suddenly applied the brakes. As a result, the petitioner, who was riding his motorcycle carefully and in compliance with traffic rules, dashed against the rear portion of the bus and sustained severe injuries.



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Immediately after the accident, the petitioner was admitted to the Government Hospital, Tindivanam and thereafter, he was taken to Apollo Hospital, Chennai for further treatment. The accident occurred solely due to the rash and negligent driving of the bus driver. The sudden application of brakes without any warning clearly establishes negligence on the part of the driver of the respondent's bus. At the time of accident, the petitioner was hale and healthy and was working as a Lecturer earning a sum of Rs.20,000/- as a monthly income. Due to the grievous injuries sustained, he has become incapable of performing his normal work and is unable to move from one place to another. Even at present, he is bedridden and there is no movement in his body. Hence, the petitioner filed the claim petition against the respondent – TNSTC and originally claimed a compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) for the injuries, disability and consequential losses suffered by him. Later by way of amendments vide I.A.Nos.37 of 2017 and 239 of 2018, the claim was enhanced to Rs.65,00,000/- (Rupees Sixty Five Lakhs only).

RESPONDENT'S CASE IN BRIEF:

4.The respondent filed a counter statement denying all the allegations made by the petitioner in the Original Petition. The respondent contended that the accident occurred solely due to the rash and negligent



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riding of the petitioner himself and not due to any negligence on the part of the driver of the respondent's bus. When the respondent's driver stopped the bus at bus stop to alight passengers, the petitioner who failed to maintain minimum distance with the ongoing respondent's bus, dashed against the bus from behind on the right side. The Criminal Case filed in this regard against the respondent's driver was closed as mistake of fact. The respondent further put the petitioner to strict proof of his age, occupation, monthly income, nature of the alleged injuries sustained, period of treatment, medical expenses incurred and percentage of disability, if any, suffered by him, by producing cogent documentary evidence. The Original Petition is bad for non-joinder of the owner and the insurer of the Hero Honda motorcycle bearing Registration No.TN-32-T-7612. Stating so, the respondent prayed for dismissal of the Original Petition.

TRIBUNAL

5.At trial, on the side of the petitioner, the petitioner examined himself as P.W.1 and marked Ex-P.1 to Ex-P.30, Ex-P.37 to Ex-P.39. Dr.M.Anbuselvam, Neurosurgeon attached to Apollo Hospital, Chennai was examined as P.W.2 and through him Ex-P.31 was marked. Dr.Mohan, Principal, P.T.Lee. Chengalvarayanaicker Engineering College,



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Kanchipuram was examined as P.W.3 and Ex-P.32 to Ex-P.36 were marked. Petitioner's wife – Sundari was examined as P.W.4 and Ex-P.40 was marked. Disability Certificate issued by Medical Board was marked as Ex-C.1. No oral or documentary evidence was adduced on the side of the respondent.

6.The Tribunal, based on the evidence of P.W.1 and Ex-P.1 – First Information Report (F.I.R), the Tribunal concluded that the accident occurred due to the rash and negligence of the respondent's driver. The 90% spinal injury suffered by the petitioner was caused in the accident. Accordingly, the Tribunal directed the respondent to pay compensation to the petitioner. The compensation determined by the Tribunal is as tabulated hereunder:

Sl.No.	Head	Amount
1	Transportation, nourishing food and miscellaneous expenditure	Rs.1,00,000/-
2	Medical Expenses	Rs.18,25,887/-
3	Future Medical Expenses	Rs.1,00,000/-
4	Attender charges	Rs.50,000/-
5	Future Attender charges	Rs.1,00,000/-
6	Disability	Rs.46,00,465/-
7	Damages for pain, suffering and trauma	Rs.50,000/-
8	Loss of amenities	Rs.50,000/-
	Total compensation is fixed as	Rs.68,76,352/-
	Rounded off to	Rs.68,76,000/-



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7.Assailing the Award passed by the Tribunal, the respondent – TNSTC has preferred this Civil Miscellaneous Appeal. Challenge is to the liability as well as the quantum of compensation.

ARGUMENTS:

8.Mr.S.S.Santhosa Kumar, learned counsel appearing for the appellant / respondent / TNSTC submits that the petitioner was riding the motorcycle in a rash and negligent manner which caused him to skid on the road, fall down and thereby, he sustained self-inflicted injuries. According to the learned counsel, the driver of the respondent's bus did not cause the accident as alleged in the Original Petition. He further submits that the alleged accident is stated to have occurred on March 31, 2012 at about 09.30 p.m., whereas the First Information Report came to be registered only on April 8, 2012. The said delay, according to the learned counsel, clearly indicates that the respondent's bus was not involved in the accident. The learned counsel further submits that the Tribunal failed to take into consideration the entire facts and circumstances of the case and erroneously arrived at the conclusion that the accident was caused due to the rash and negligent driving of the driver of the respondent's bus. He



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further submits that the Tribunal, in the absence of acceptable documentary evidence, erroneously fixed the monthly income of the respondent at Rs.17,898/-. According to the learned counsel, the said determination was made without any proper proof and is therefore unsustainable. Further, the Tribunal awarded compensation in an excessive and exorbitant manner, without any legal basis. Accordingly, the learned counsel prays to allow this Civil Miscellaneous Appeal and set aside the Award passed by the Tribunal. In the alternative, he seeks fixation of contributory negligence on the part of the petitioner and to make a consequent reduction in the compensation awarded.

9.Mr.M.Krishnamoorthy, learned counsel appearing for the respondent / petitioner would contend that immediately after the accident, the respondent became unconscious and was admitted by the general public in the Government Hospital, Tindivanam. Thereafter, he was referred to Apollo Hospital, Chennai, for further treatment. Hence, there was a delay in lodging F.I.R. Further, mere delay in filing F.I.R. is not sufficient to conclude that the accident did not occur in the manner alleged by the petitioner. It is further contended that the F.I.R. was duly registered and that the driver of the respondent - Corporation bus was charge-sheeted. The criminal trial against the respondent's driver is stated to be pending.



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According to the learned counsel, if the respondent's driver had not caused the accident, he would have taken steps to quash the FIR, the charge-sheet or the criminal proceedings. However, no such steps were taken. Therefore, the learned counsel contends that the conduct of the respondent's driver clearly indicates that the accident was caused due to his rash and negligent driving. He further contends that on the side of the petitioner, P.W.1 to P.W.4 were examined to establish both, negligence on the respondent's driver as well as earning capacity of the petitioner. Though the respondent had pleaded that the driver of the respondent's bus was not responsible for the accident, neither any official from the respondent – TNSTC nor the bus's driver or conductor entered the witness box to deny the occurrence of the accident. In the given circumstances, the Medical Board assessed 90% permanent disability to the petitioner due to the accident, as the petitioner suffered paraplegia, which is evident from Ex-C.1. Prior to the accident, the petitioner was working as a Lecturer in an Engineering College and was earning a consolidated sum of Rs.18,494/- per month. Considering the entire facts and circumstances of the case, the Tribunal rightly awarded just and reasonable compensation and hence, there is no necessity for interference with the award. Accordingly, the learned counsel prays for dismissal of the Civil Miscellaneous Appeal.



DISCUSSION:

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10.This Court has considered the submissions made on either side and perused the materials available on record.

11.The points that arise for consideration in this Civil Miscellaneous Appeal are as follows:

- (i) Whether the respondent's bus bearing Registration No.TN-32-N-2115 was involved in the accident?
- (ii) Whether the driver of the respondent's bus drove the vehicle in a rash and negligent manner and caused the accident?
- (iii) Whether the Award passed by the Tribunal is liable to be set aside or interfered with?

Point No.(i)

12.Bare reading of the counter filed by the respondent would show that it has accepted the factum of accident. In Paragraph No.4 of the counter, the respondent has averred that the accident occurred due to the negligence on the part of the petitioner in not maintaining a safe distance from the respondent's bus. It has been narrated that when the respondent's



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driver stopped the bus at bus stop to alight passengers, the petitioner failed to maintain minimum distance with the ongoing respondent's bus and dashed against the bus from behind on the right side. Relevant extract reads thus:

'4.The true facts are as follows:

கடந்த 31/03/2012 அன்று இந்த எதிர்மனுதாரருக்கு பாத்தியமான பேருந்து பதிவு எண். டிஎன்32/என்2115 தடம் எண் 31 பேருந்தை அதன் ஓட்டுநர் சீரான வேகத்தில் சாலை விதிகளை கடைபிடித்துக் கொண்டு திண்டிவனத்தில் இரவு 21.00 மணிக்கு நடையெடுத்து ஓலக்கூர் நோக்கி செல்லும் போது சுமார் 21.20 மணியளவில் ஆதனூர் கூட்ரோடு பேருந்து நிறுத்தத்தில் பேருந்தை நிறுத்தி பயணிகளை இறக்கி விட்டு கொண்டிருக்கையில் பேருந்திற்கு பின்னால் வந்த மனுதாரர்/இருசக்கர வாகன ஓட்டி இடைவெளி இல்லாமல் வந்ததால் பேருந்தின் பின் வலதுபுறம் மோதி கொண்டார். இந்த விபத்திற்கு முழு காரணம் மனுதாரரின் அதிவேகமான மற்றும் அஜாக்கிரதையான செயலே காரணமாகும். எனவே, இந்த விபத்திற்காக இந்த எதிர்மனுதாரர் எவ்வித நட்புடும் வழங்க



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கடமைப்பட்டவர் அல்ல.

ஒலக்கூர் காவல் துறையினரால்,
எதிர்மனுதாரர் ஓட்டுனர் மீது தொடரப்பட்ட
வழக்கில் "Mistake of Fact" என வழக்கு
முடிக்கப்பட்டுள்ளது.

13.Clearly the factum of accident is admitted by the respondent. The dispute is only with negligence. **Point No.(i) is answered accordingly.**

Point No.(ii)

14.The question now is who caused the accident. Whether it is the negligence of the petitioner or that of the respondent's driver. The accident occurred during night hours on the Tindivanam–Chennai National Highway. In this case, the F.I.R. was registered against the driver of the respondent's bus, with a delay of seven days. The informant is a person from the same village as that of the petitioner, who happened to travel behind the petitioner at the time of accident. He has stated in the F.I.R that immediately after the accident, the petitioner became unconscious and he was rushed to Government Hospital from where he was referred to Apollo Hospital, Chennai. He has stated that he accompanied the petitioner to the Apollo Hospital, Chennai and he is filing the complaint after his return.



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Hence, the First Information Report came to be registered on April 8, 2012

i.e., after a delay of eight days from the date of accident. This Court is of the view that the explanation given by the informant in the F.I.R as to the delay of eight days in lodging F.I.R is satisfactory.

15.In the F.I.R., the respondent's driver is said to be negligent in applying sudden brakes without any warning which led to the accident. P.W.1 has deposed along the lines of the F.I.R. He has deposed that the respondent's bus driver stopped the bus abruptly on the carriage way without giving any warning to board and alight passengers and that caused the accident. The competent person from the respondent's side to depose in this regard is the respondent's bus driver – Dakshanamoorthy. But in this case, he has not been examined. The respondent could have at least examined the conductor of the bus, but it has failed to do so. No other person who witnessed the accident or competent to speak about the occurrence entered the witness box to depose on the respondent's behalf. No oral evidence was let in by the respondent to substantiate its defence that the accident occurred due to the rash and negligence of the petitioner. In the absence of any rebuttal evidence on the side of the respondent, the Tribunal, based on the oral and documentary evidence adduced,



particularly Ex-P.1 – FIR, rightly came to the conclusion that the accident was a result of the rash and negligent driving of the respondent's bus driver. **Point No.(ii) is answered accordingly.**

Point No.(iii)

16.The petitioner is a M.E. graduate, which is proved by Ex-P.22 – Certificate of Master of Engineering. At the time of accident, the petitioner was working as a Lecturer in a private Engineering College and earned a sum of Rs.17,898/- per month in the month of March 2012, as evidenced by Ex-P.36 – Salary Register, marked through P.W.3 who is none other than the Principal of the Educational Institution where the petitioner was working as a Lecturer. The Tribunal rightly fixed the said amount as the monthly income.

17.Ex-P.2 to Ex-P.21, comprising the accident register, discharge summaries, medical bills, and pharmacy bills, clearly establish that the petitioner sustained grievous injuries in the accident and underwent prolonged medical treatment. As stated *supra*, the petitioner was initially admitted at Government Hospital, Tindivanam and later referred to Apollo Hospital, Chennai. The treatment particulars of the

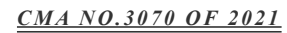


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petitioner can be summarized as per the following table:

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<i>Exhibit</i>	<i>Hospital</i>	<i>Date of Admission</i>	<i>Date of Discharge</i>	<i>Diagnosis</i>	<i>Summary of Treatment</i>
Ex-P.3	Apollo Speciality Hospital, Chennai	01.04.2012	23.05.2012	1)Traumatic C5 fracture with Quadriplegia 2)Respiratory Failure 3)Soft Tissue Injuries 4)Grade III Occipital Pressure Sore 5)Urinary Tract Infection	OPERATIVE PROCEDURE: C5 anterior cervical corpectomy, C4-5 and C5-6 discectomy and C4-C6 stabilisation with cage (gesco), plate and screws (globus)
Ex-P.4	Apollo Speciality Hospital, Chennai	30.07.2012	15.08.2012	HISTORY OF PRESENT ILLNESS: This 30 years old male had RTA on 31.03.2012 with C5 fracture dislocation and underwent corpectomy and stabilization done on 02.04.2012. He was paraplegic and under rehabilitation. Now came with history of fever associated with chills since 4 days. Fever was high spiking subsiding with medications.	COURSE IN THE HOSPITAL: On admission, clinical evaluation and necessary investigations were done. Urine cultures revealed ESBL E.coli. He was started on appropriate antibiotics in consultation with ID.Specialist. His foley's catheter was changed. He was mobilized gradually and physiotherapy given. His fever gradually settled. Repeat urine cultures showed no growth. As he remained stable neurologically and hemodynamically, he was discharged with following advice.
Ex-P.5	SRM Hospital	15.10.2012	20.10.2012	DIAGNOSIS : recurrent e-coli urinary tract infection post-op case of C5 fracture with post-traumatic quadriplegia myositis ossificans	Reinitiated on appropriate antibiotics as per culture and sensitivity



18. The grievous nature of injury and the intense medical treatment could be inferred from a bare reading of the treatment particulars shown above. It could also be seen that the petitioner has obtained treatment as out-patient over a span of 1 ½ years. Given the nature of injuries, nature and period of treatment, the medical expenses claimed by the petitioner to the tune of Rs.18,25,887/- appears to be reasonable and they are also supported by medical evidence and bills.

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and lung infection. He regarded the petitioner's disability as 100% permanent disability. While P.W.2 regards it as 100% disability, the Medical Board has assessed the petitioner's disability with respect to both upper limb and lower limb and spine, as 90% disability vide Ex-C.1. Due to the said disability, the petitioner is unable to perform even his day-to-day activities and has completely lost his earning capacity. He is permanently dependent on others for his day-to-day needs. Hence, in view of the spinal injury and other injuries, the petitioner suffers from 100% functional disability. In these circumstances, the Tribunal rightly considered the petitioner's disability as 100% functional disability and rightly adopted the multiplier method.

20. Further, as per Ex-P.30 - Aadhar Card of the petitioner, he was born on May 20, 1983 which means at the time of the accident, he was 28 years old. But the Tribunal has taken his age as 29 based on the discharge summaries and other medical records. However, this is not significant as the appropriate multiplier remains the same. The appropriate multiplier for the age group of 26-30 years as per ***Sarla Verma -vs- Delhi Transport Corporation***, reported in ***(2009) 6 SCC 121*** is 17. Hence, there is nothing wrong with the multiplier of 17 employed by the Tribunal. The Tribunal has rightly applied 40% future prospects as per Judgment of Hon'ble Supreme Court in ***National Insurance Company Limited -vs-***



Pranay Sethi, reported in **(2017) 16 SCC 680**.

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21. In all other aspects, this Court does not find any irregularity or illegality in the Award passed by the Tribunal. The total compensation of Rs.68,76,000/- awarded appears to be just and reasonable. Hence, there is no necessity to interfere with the Award. **Point No.(iii) is answered accordingly.**

CONCLUSION:

22. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant / insurance company is directed to deposit the entire amount along with interest, less the amount if any already deposited, within six weeks from the date of receipt of a copy of this Judgment, as per the directions of the Tribunal. Considering the facts and circumstances of the case, there shall be no order as to costs in this Civil Miscellaneous Appeal. Consequently, connected Civil Miscellaneous Petition is closed.

[N.S.K., J.]

[R.S.V., J.]

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Speaking Order : Yes

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To

The Motor Accident Claims Tribunal
(II Additional District Court)
Tindivanam.



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