

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.1661 & 1659 of 2008

1. Martin (Minor)  
Rep.by his grand mother &  
next friend, Soosaimary ...Appellant in CMA No.1661
2. Soosaimary ...Appellant in CMA No.1659/  
Claimant

Versus

Tamil Nadu State Transport  
Corporation Ltd.  
Rep. by its Managing Director,  
Villupuram Division - III,  
Kanchipuram District. ... Respondent in both the  
appeals

PRAYER:

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the order and decreetal order dated 22.03.2007 in M.C.O.P.No.2214 & 2379 of 1999 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

For Appellant : Mrs.Ramya V.Rao  
in both CMAs

For Respondent : Mr.S.V.Vasantha Kumar  
in both CMAs

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JUDGMENT

Both the appeals are preferred against the judgement and decree passed in M.C.O.P.Nos.2214 and 2379 of 1999 passed by the learned II Judge, Court of Small Causes, Chennai.

2. The brief facts of the case are as follows :-

On 29.06.1998 at about 16.30 hours, the appellant in both

appeals were travelling as passengers in a Transport Corporation bus bearing Registration No.TN 21 N 0447, which was driven by the driver in a rash and negligent manner dashed against the lorry bearing Registration No.TN 21 G 6787. Due to which, the appellant in both appeals, sustained grievous injuries.

3. Heard both sides.

4. On perusal of the Ex.P2, FIR and also based on the arguments advanced by the learned counsel for the appellants, it is seen that the claimants were passengers in the bus belonging to the respondent transport Corporation at the time of accident. The vehicle involved in the accident is the Transport Corporation Bus. On a perusal of the FIR, it reveals that the lorry dashed against the right side back portion of the bus and the complainant is the driver of the Transport Corporation bus, who informed that due to negligent driving of the lorry driver, the accident had occurred. The Tribunal after verifying the evidence and on appreciation of FIR fixed the liability on the driver of the lorry. The evidence deposed before the Tribunal is the person who is the grandmother of the minor child and who also sustained injury in the above said accident. Both the appellants are travelling in the bus as passengers.

5. The appellant / claimant before the Tribunal has deposed that the accident took place only due to the rash and negligent driving of the bus driver. Whereas the Driver of the bus has preferred the complaint by stating that the accident caused only by the rash and negligent driving of the driver of the lorry.

6. It was observed by the Tribunal that the lorry owner and the insurance company have not been made as party. Hence, the Tribunal has dismissed the claim application.

7. The injured were the passengers of the bus and it is open to them to proceed either against the bus in which they travelled or the other vehicle involved in the accident. The Tribunal failed to follow the three benches judgment passed by Apex Court in 2008 3 SCC 748 (T.O. Anthony versus Karvarnan & others), where it was clearly held that when it is a case of composite negligence each wrong doer is jointly and severally liable to the injured for payment of entire damages and the injured has a choice to proceed against all or any one of them. The injured need not establish the extent of responsibility of each wrong doer separately.

8. The accident occurred due to the involvement of the bus and the lorry. Even though the driver of the bus has stated that the driver of the lorry was at fault, it is open to the

injured to proceed against either of them. The bus driver could have been even more cautious while driving so that the accident could have been averted.

9. The complaint preferred by the driver of the Transport Corporation cannot be presumed as genuine, particularly in the absence of any other witness examined in support of the facts placed before the police station for registering the case as against the lorry driver.

10. Hence, considering the above facts, the order of the Tribunal is set aside and this Court is of the view that 50% contributory negligence on the lorry and 50% on the transport corporation bus can be fixed.

11. Considering the nature of injury and the period of treatment undergone by the claimants, this Court is inclined to award the compensation under the following heads :

In CMA.No.1661 of 2008:

| S.No. | Heads                      | Award amount<br>Rs. |
|-------|----------------------------|---------------------|
| 1.    | Transportation             | 50,000              |
| 2.    | Extra Nourishment          | 50,000              |
| 3.    | Medical Expenses           | 30,000              |
| 4.    | Loss of amenities          | 1,00,000            |
| 5.    | Pain and Suffering         | 1,00,000            |
| 6.    | Disability                 | 2,00,000            |
| 7.    | Attender Charge            | 1,00,000            |
| 8.    | Future Medical Expenditure | 1,00,000            |
|       | Total                      | 7,30,000            |

(Rupees Seven lakhs thirty thousand only)

In CMA.No.1659 of 2008:

| S.No. | Heads                           | Award amount<br>Rs. |
|-------|---------------------------------|---------------------|
| 1.    | Loss of Income during treatment | 4,000               |
| 2.    | Transportation                  | 3,000               |
| 3.    | Extra Nourishment               | 3,000               |
| 4.    | Pain and Suffering              | 10,000              |
| 5.    | Disability                      | 20,000              |
|       | Total                           | 40,000              |

(Rupees forty thousand only)

12. As regards the liability, a sum of Rs.20,000/- (50% of Rs.40,000/-) in C.M.A. No.1659 of 2008 and Rs.3,65,000/- (50% of Rs.7,30,000/-) in C.M.A. No.1661 of 2008 are fixed on the transport corporation towards negligence .

13. In view of the above findings and discussions held, both the Civil Miscellaneous Petitions are allowed and the compensation of Rs.20,000/- in C.M.A No.1659 of 2008 and Rs.3,65,000/- in C.M.A. No.1661 of 2008 are directed to be paid to the injured claimants.

14. The transport corporation is directed to deposit the amount awarded by this Court along with interest at 7.5.% p.a. from the date of claim petition till the date of deposit, to the credit of respective claim petitions within a period of four weeks from the date of receipt of a copy of the Judgment. On such deposit being made, the Tribunal shall transfer the share of the major claimant to the Bank Account, through RTGS within a period of two weeks thereafter. Insofar as the share of the minor claimant is concerned, the same shall be deposited in fixed deposit in any one of the Nationalized Banks, till he attain majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. The claimants shall pay the necessary court fee for the compensation amount awarded by this Court before receiving the copy of this judgment. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The II Judge, Court of Small Causes  
Motor Accidents Claims Tribunal,  
Chennai.

+4ccs to Mr.S.V.Vasanth Kumar, Advocate, S.R.No.91299 & 91299

C.M.A.Nos.1661 & 1659 of 2008

TM(CO)  
CS/19/07/18