



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.08.2021

Delivered on : 08.10.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

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C.M.A(MD) Nos.1326 of 2013 and (*)228 of 2014
and M.P.(MD)No.2 of 2014

C.M.A(MD) No.1326 of 2013

Shanthi

... Appellant / Petitioner

Vs.

1.Uchimahali

2.The Branch Manager,

Royal Sundaram Alliance Insurance Ltd.,

No.176, D & E Trivandrum Road,

Vannarapettai, Tirunelveli.

3.The Managing Director,

Tamil Nadu State Transport Corporation Ltd.,

Vannarapettai, Tirunelveli.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No.441 of 2011 on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate Court, Tirunelveli, dated 27.08.2012.

For Appellant

: Mr.T.Selvakumaran

For R1

: No appearance

For R2

: Mr.S.Srinivasa Raghavan

For R3

: Mr.P.Prabhakaran

C.M.A(MD) No. (*)228 of 2014

The Managing Director,

Tamil Nadu State Transport Corporation Ltd.,

Vannarapettai, Tirunelveli.

... Appellant / 3rd Respondent

Vs.

1.Shanthi

... 1st Respondent / Petitioner

2.Uchimahali



3.Royal Sundaram Alliance Insurance Company Ltd.,
Through its Branch Manager,
Office at No.176, D & E Trivandrum Road,
Vannarapettai, Tirunelveli.

... 2nd & 3rd Respondents /
Respondents 1 & 2 /

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No.441 of 2011 on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate Court, Tirunelveli, dated 27.08.2012.

For Appellant	: Mr.P.Prabhakaran
For R1	: Mr. T.Selvakumaran
For R2	: No appearance
For R3	: Mr.S.Srinivasa Raghavan

COMMON JUDGMENT

Both the Appeals are arising out of the same order, dated 27.08.2012, in M.C.O.P.No.441 of 2011, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate Court, Tirunelveli.

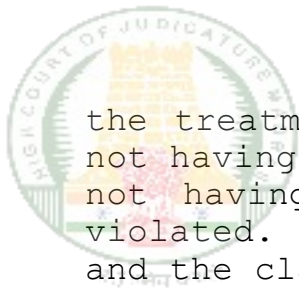
2.C.M.A.(MD)No.1326 of 2013 has been filed by the Claimant and C.M.A.(MD)No.228 of 2014 has been filed by the Transport Corporation.

3.Brief substance of the petition in M.C.O.P.No.441 of 2011, is as follows:-

The petitioner was aged about 19 years at the time of accident and she worked as a police in Manimutharu Battalion and she was earning Rs.11,500/- per month. On 26.08.2011, at about 2.00 p.m., when the petitioner was travelling in a Bus bearing Registration No.TN-72-N-0861 that belonged to the third respondent, the bus driver tried to overtake a lorry bearing Registration No.TN-72-J-2686 that belonged to the first respondent and insured with the second respondent, the lorry driver in a rash and negligent manner applied sudden brake without any reason, the bus driver could not control the bus and hit against the back side of the lorry. The petitioner sustained injuries and she was admitted in Karthick Nursing Home at Perumalpuram and she undertook treatment as inpatient for 20 days. The petitioner claimed a sum of Rs.8,00,000/- as compensation.

4.Brief substance of the counter filed by the second respondent in M.C.O.P.No.441 of 2011, is as follows:-

The accident is not due to the rash and negligent driving of the first respondent's lorry driver. The third respondent's Bus driver is responsible for the accident. Age, profession, income, mode of accident, injuries, treatment particulars and expenses for



the treatment are to be proved. The first respondent's driver was not having valid driving licence. The first respondent vehicle was not having fitness certificate. Permit, policy conditions are violated. The second respondent is not liable to pay compensation and the claim is excessive.

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5. Brief substance of the counter filed by the third respondent in M.C.O.P.No.441 of 2011, is as follows:-

The manner of accident as narrated in the petition is wrong. The driver of the third respondent is not responsible for the accident. The lorry driver is responsible for the accident. Criminal complaint was lodged only against the lorry driver. Age, profession, income, manner of accident, injuries, treatment particulars and expenses for the treatment are to be proved by the petitioner. This respondent was impleaded only as a formal party. The claim is excessive.

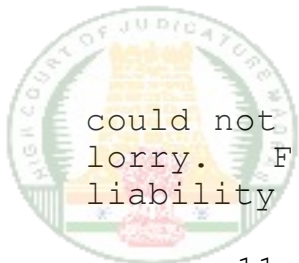
6. On the side of the petitioner, two witnesses were examined and thirteen documents were marked. On the side of the respondents, three witnesses were examined and one document was marked.

7. After hearing both sides, the Tribunal awarded a sum of Rs.2,71,704/- as compensation. Against the same, the third respondent/ Transport Corporation has filed an Appeal in C.M.A. (MD)No.228 of 2014 and the claimant / Shanthi has filed an appeal in C.M.A.(MD)No.1326 of 2013, for enhancement of compensation.

8. On the side of the claimant, it is stated that the Tribunal ought to have granted Rs.72,000/- towards loss of income for the treatment period. The Tribunal ought to have granted Rs.1,00,000/- for loss of amenities, Rs.1,00,000/- for pain and sufferings, Rs.20,000/- for transport expenses, Rs.20,000/- for extra nourishment, Rs.95,000/- for Disability and Rs.25,000/- for attendant charges and prayed the amount to be enhanced.

9. On the side of the Transport Corporation, it is stated that the entire negligence was on the lorry driver. The Tribunal wrongly fixed the liability on the bus driver. The award is excessive. There is no specific proof for monthly income. The Tribunal is wrong in awarding Rs.36,000/- for three months loss of income. The award of Rs.2,000/- per percentage is excessive. The Tribunal awarded Rs.40,000/- towards pain and sufferings, Rs.1,20,504/- towards medical expenses, Rs.3,000/- towards Transport expenses, Rs.4,000/- towards extra nourishment and Rs.5,000/- towards attendant charges, which are all excessive.

10. On the side of the Transport Corporation, it is stated that the lorry driver is responsible for the accident, he only overtook the bus and suddenly applied brake and the bus driver



could not control the vehicle and the bus hit the back side of the lorry. F.I.R was registered against the lorry driver, but, the liability is fixed on the bus driver.

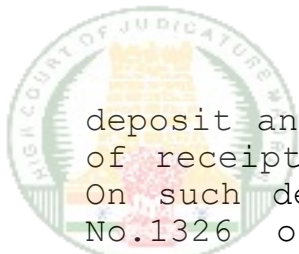
11. The lorry driver was examined as R.W.1. The bus driver was examined as R.W.3. Both the lorry driver and the bus driver blamed each other for the cause of accident. Judgment copy, in M.C.O.P.Nos.1312, 1315, 1321 of 2011, was marked as Ex.R1. On the complaint of the bus driver, a F.I.R was registered against the lorry driver. F.I.R is insufficient to fix the liability on the lorry driver. It is seen that three more cases were filed for claiming compensation on the basis of the same accident in M.C.O.P.No.1312 of 2011, 1315 of 2011, 1321 of 2011, on the file of the Fast Track Court No.II, Tirunelveli. In all the above cases, it was held that the driver of the bus was responsible for the accident. Already Fast Track Court No.II, Tirunelveli, fixed the liability on the Transport Corporation in three M.C.O.P petitions. It is stated that no appeal was filed against the award passed in all those cases. The bus hit against the lorry from the back side. If sufficient distance was maintained by the bus driver, there was no possibility of the accident. In the above circumstances, it is decided that the bus driver is responsible for the accident.

12.Age of the injured at the time of accident is 19 years. She has undergone two surgeries and P.W.2/ Doctor fixed the disability as 31.6%. The accident took place in the year 2011 and hence, for 31.6% disability, the injured claimant is entitled to Rs.94,800/- (Rs.3,000/- X 31.6 = Rs.94,800/-) as compensation. For the period of treatment and for the period of rehabilitation, the injured claimant is entitled for five months loss of income, which is calculated as Rs.60,000/- (Rs.12,000/- X 5 = Rs.60,000/-). The compensation awarded by the Tribunal, under the head of Transport expenses (Rs.3,000/-), pain and sufferings (Rs.40,000/-), medical expenses (Rs.1,20,504/-), extra nourishment (Rs.4,000/-) and attendant charges (Rs.5,000/-) are all reasonable.

13.Hence, the award dated 27.08.2012, in M.C.O.P.No.441 of 2011, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate Court, Tirunelveli, is hereby enhanced from Rs.2,71,704/- to **Rs.3,27,304/-**.

14.In the result, the Civil Miscellaneous Appeal filed by the Transport Corporation in C.M.A.(MD)No.228 of 2014 is dismissed and the Appeal filed by the claimant /Shanthi in C.M.A.(MD)No.1326 of 2013 is partly allowed and the award is enhanced from Rs.2,71,704/- to **Rs.3,27,304/-**.

15.The Transport Corporation / appellant in CMA(MD)No.228 of 2014 is directed to deposit **Rs.3,27,304/-** along with interest at the rate of 7.5% p.a from the date of petition till the date of



deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the claimant / appellant in CMA(MD) No.1326 of 2013 is permitted to withdraw the amount, after deducting amount, if any, already received by her. The Claimant is not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

(*) Amended as per order of this Court dated 19.11.2021 made in C.M.A(MD)Nos.1326 of 2013 & 228 of 2014

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

To

(*) Substitute the order copy already despatched on 29.10.2021

1.The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Tirunelveli.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+2 CC to M/s.P.PRABHAKARAN, Advocate (SR-31809, SR-31809[F] dated 08/10/2021)

+2 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-31876,SR-31873[F] dated 08/10/2021)

C.M.A(MD) Nos.1326 of 2013 and 228 of 2014
08.10.2021

_RD(27.10.2021) 5P 8C
RS(02.12.2021) 5P-8C