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C.M.A.No.3415 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.3415 of 2021
and C.M.P.No.19753 of 2021

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Head Office at No.12, Ramakrishna Road
Salem – 636 403.

.. Appellant

VS

Vasanthakumar

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.07.2021 made in M.C.O.P.No.301 of 2017 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem.

For Appellant : Ms.P.Rajathi
for Mr.D.Raghu



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For Respondent : Mr.R.Navaneetha Krishnan

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J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award dated 16.07.2021 made in M.C.O.P.No.301 of 2017 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.301 of 2017 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem. The respondent filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.01.2017.

3.According to the respondent, on the date of accident, i.e., on 12.01.2017 at about 18.30 hours, while the respondent was travelling as a passenger in the bus belonging to the appellant/Transport Corporation bearing Registration No.TN 30 N 0352 on Mettur to Mecheri Main Road,



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near Karumalai Koodal, the driver of the bus drove the same in a rash and negligent manner, suddenly applied brake without any indication. Due to the said impact, the respondent was thrown out and sustained grievous injuries all over the body. Therefore, the respondent filed the above claim petition claiming compensation for the injuries sustained, against the appellant/Transport Corporation.

4.The appellant/Transport Corporation filed counter statement denying the averments made in the claim petition and stated that at the time of accident, the bus was taken from Mettur Bus Stand at 17.50 hours and was proceeding towards Taramangalam. At about 18.15 hours, the bus was stopped at Vaitheeswara School bus stop, for the passengers to get down and get in. While the bus started, the driver, conductor and some of the passengers alerted one of the passengers, who was travelling in the foot board to come inside the bus. Thereafter, the bus was stopped at Karumalai koodal bus stop and the passengers informed that the respondent, who was travelling in the foot board slipped and fell down about few meters before the bus stop. On information, Police enquired and since the driver of the bus is not responsible



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for the accident, he was allowed to complete the trip. Therefore, the appellant/Transport Corporation is not liable to pay any compensation to the respondent. In any event, the compensation claimed by the respondent is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined himself as P.W.1 and 14 documents were marked as Exs.P1 to P14. The appellant/Transport Corporation examined the driver of the bus as R.W.1 and did not mark any document. The disability certificate of the respondent is marked as Ex.C1.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant to pay a sum of Rs.27,01,958/- as compensation to the respondent.

7.Against the said award dated 16.07.2021 made in M.C.O.P.No.301 of 2017, the appellant/Transport Corporation has come out with the present appeal.



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8.The learned counsel appearing for the appellant/Transport Corporation contended that at the time of accident, the injured respondent was travelling in the foot board in spite of warning given by the conductor, driver and passengers of the bus. On his own negligence, the respondent slipped and fell down from the bus. Mere registering of F.I.R. against the driver of the bus cannot be a ground for fixing negligence on him. The Tribunal ought to have fixed negligence on the part of the respondent. The learned counsel further contended that the Tribunal failed to note that no document was filed by the respondent to prove his age, avocation and income. The Tribunal erred in fixing a sum of Rs.7,000/- per month as notional income of the respondent, which is excessive. The Medical Board assessed the disability of the respondent at 60%. The Tribunal erred in fixing the disability at 100% and adopted multiplier method to award compensation. The Tribunal has awarded interest @ 9% per annum, which is on the higher side. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.



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9.The learned counsel appearing for the respondent made his submissions in support of the award passed by the Tribunal and submitted that the compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the entire materials on record.

11.From the materials on record, it is seen that it is the case of the respondent that while he was travelling in the bus belonging to the appellant/Transport Corporation on 12.01.2017, the driver of the bus belonging to appellant drove the same in a rash and negligent manner at high speed, applied brake suddenly and due to which, the respondent was thrown out and sustained injuries. To substantiate his case, he examined himself as P.W.1 and relied on F.I.R., which was registered against the driver of the bus. On the other hand, it is the case of the appellant that on the date of accident, the respondent was standing in the foot board without listening the driver,



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conductor & other passengers, who asked the respondent to come inside the bus. At Karumalai Koodal bus stop, the passengers informed that the person who travelled in the foot board slipped and fell down. In view of the same, the driver of the bus was not responsible for the accident. It is the further case of the appellant that after enquiry, bus was allowed to proceed to complete the trip. If really the driver of the bus was responsible for the accident, public would not have allowed the bus to proceed to complete the trip. To substantiate the case, driver of the bus was examined as R.W.1.

11(i) The Tribunal considering the materials placed before it, held that accident occurred due to negligence of the driver of the bus, lack of safety measures in the bus belonging to the appellant and respondent is entitled to get compensation. From the materials on record, it is seen that the Tribunal failed to consider the contention of the appellant that while the respondent was travelling in the foot board, slipped and fell down due to his own negligence. The Tribunal has also not considered the evidence of R.W.1, driver of the bus. Further, the respondent has not stated that where he was sitting in the bus. He also did not deny the contention of the appellant that he



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was travelling in the foot board by filing reply statement. The appellant must provide safety measures in the bus like doors in the entry and exit. At the same time, the passenger must also travel by sitting or standing inside the bus. When a passenger travels in the foot board, he also contribute, if an accident occurs, when he falls down from the bus. In the present case, it is not the case of the respondent in the claim petition that he was sitting inside the bus and due to negligence of the driver of the bus, he fell down. In view of the same, 100% negligence fixed by the Tribunal on the driver of the bus is set aside. We are of the considered view that respondent also contributed to the accident and therefore, negligence is fixed on the part of the respondent at 20% and on the part of driver of bus at 80%. The respondent is entitled to compensation only at 80% of the compensation awarded.

12.As far as quantum of compensation is concerned, it is the case of the respondent that in the accident, he suffered diffuse axonal injury, brain stem injury with post traumatic delirium, parasymphyseal, fracture of left clavicle, small hemorrhagic contusion at right temporal lobe, right interior ganglio capsular region left thalamus bilateral frontal lobe right partial lobe, thin



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subarachnoid hemorrhage at supra seller cistern, right sylvian fissure, thin subdural hemorrhage at tentorium and inter hemispheric fissure, fracture of mandible body, left zygomatic arch, left maxilla, left orbit body of sphenoid, petechial hemorrhages at bilateral ganglio capsular region, left thalamus, right cerebral peduncle bilateral frontal and parietal lobe. After the accident, immediately the respondent was taken to Manipal Hospital, Salem, where, he took first aid. Then he took treatment as in-patient in Neuro Foundation Hospital Private Limited, Salem, from 14.01.2017 to 08.02.2017 and then in Vivekananda Medical Care Hospital, Tiruchengode, from 02.03.2017 to 16.06.2017 for diffuse axonal injury Grade III with post partum delirium, left side body fracture & left hemiplegia. To substantiate his case, he examined himself as P.W.1 and produced wound certificate, two discharge summaries issued by Neuro Foundation and Vivekananda Medical Care Hospital as Exs.P3 to P5. The Medical Board assessed the disability at 60% and issued Ex.C1 disability certificate. The Tribunal considering the fact that the respondent suffered paralyse on the left side, held that he cannot do his normal work, suffered functional disability and fixed 100% functional disability. It is the case of the respondent that at the time of accident, he was



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working as Building contractor and was earning a sum of Rs.30,000/- per month. He failed to prove the said claim. The Tribunal considering the nature of avocation, in the absence of any document with regard to income, fixed a sum of Rs.7,000/- per month as notional income, adopted multiplier method and granted compensation for 100% disability. The accident occurred in the year 2017 and the notional income fixed by the Tribunal is meagre. In view of meagre amount fixed by the Tribunal as notional income, the compensation granted for 100% disability, when respondent has suffered 60% disability is not interfered with. Similarly, the amounts granted by the Tribunal under other heads are not excessive and hence, the same are not interfered with. The Tribunal granted compensation along with interest at the rate of 9% per annum from the date of petition till the payment. The respondent is entitled to interest at the rate of 7.5% per annum. Thus 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 or reduced
1.	Loss of future earnings	18,81,600	18,81,600	Confirmed



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2.	Pain and suffering	1,50,000	1,50,000	Confirmed
3.	Loss of amenities	1,50,000	1,50,000	Confirmed
4.	Attendant charges	25,000	25,000	Confirmed
5.	Medical expenses in Ex.P8	4,64,858	4,64,858	Confirmed
6.	Transportation	15,500	15,500	Confirmed
7.	Extra nourishment	15,000	15,000	Confirmed
	Total	27,01,958		
	80% of the award amount		21,61,566.40 rounded off to 21,61,566	

13. With the above modification, the Civil Miscellaneous Appeal is partly allowed and 100% compensation of Rs.27,01,958/- awarded by the Tribunal is hereby reduced to Rs.21,61,566/- being 80% of the award amount. The respondent is entitled to only 80% of the compensation along with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant/Transport Corporation is directed to deposit a sum of Rs.21,61,566/- being 80% of the



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award amount, along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.301 of 2017 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V.,J) (S.M.,J)
31.10.2022

Index : Yes / No
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V.M.VELUMANI, J.,



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and
SUNDER MOHAN,J.

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To

1.Chief Judicial Magistrate
Motor Accident Claims Tribunal
Salem.

2.The Section Officer
VR Section
High Court
Madras.

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