



C.M.A(MD)No.2063 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.11.2022

Pronounced on : 30.11.2022

CORAM

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

C.M.A(MD)No.2063 of 2013

B.Chinna Maruthu

...Appellant/ Petitioner

Vs

Tamilnadu State Transport Corporation Ltd.,
represented by its Managing Director,
Madurai.

... Respondent / Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and modify the judgment and decree in M.C.O.P.No.422 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge (Fast Track Court No.III), Madurai.

For Appellant : Mr.C.Godwin

For Respondent : Mr.M.Prakash



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order M.C.O.P.No. 422 of 2002 on the file of the Motor Accident Claims Tribunal/ Additional District and Sessions Judge (Fast Track Court No.III), Madurai. The appellant is the claimant, respondent is the respondent in the claim petition.

2.Brief substance of the claim petition is as follow:

On 21.02.2000, at about 4.15 p.m., when the claimant was standing at the E.B. City bus stop, along the Madurai - Usilampatti main road, Chekkanurani, a bus bearing registration number TN 59 N 1105, came and stopped in the bus stop. When the petitioner was boarding the bus through the front entrance, the driver of the bus without ascertaining the boarding of the passengers, moved the bus in a rash and negligent manner and the petitioner fell down and the bus ran over him. The petitioner sustained injuries and he claimed a sum of Rs.3,00,000/- as compensation.

3.Brief substance of the counter filed by the respondent, in the claim petition, is as follows:

The driver of the bus drove the vehicle in a slow and cautious manner



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observing the road rules. When the bus started from the E.B. bus stop, the petitioner attempted to board the moving bus and he fell down and sustained injuries due to his own negligence. The bus driver is not responsible for the accident. The claim is excessive.

4.Four witnesses were examined and five documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.25,000/- as compensation.

5.Against the award, the claimant filed this appeal for enhancement of compensation on the following grounds:

The Tribunal failed to award just compensation. The Tribunal ought to have accepted the disability certificate wherein the Doctor assessed the disability at 36%. The Tribunal failed to consider that the petitioner was inpatient for a period of 50 days. The Tribunal failed to consider the permanent disability, pain and sufferings and future loss of earning capacity and pray the award to be enhanced.



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6.On the side of the appellant it is stated that the claimant was aged about 12 years at the time of accident and that he was studying sixth standard. When he was about to board the bus, before the conductor blow the whistle, the driver of the bus moved the bus and due to the same, the appellant sustained injury.

7.It was the petitioner who tried to board into the moving bus and he invited the accident. The respondent has not filed any cross objection or appeal disputing the liability. On the basis of the evidence of P.W.1 and on the basis of Ex.P1, the Tribunal has fixed the liability on the bus driver which is reasonable.

8.Ex.P2 is the wound certificate, Ex.P3 is the case sheet, Ex.P4 is the disability certificate, Ex.P5 are the X-rays. P.W.4, the Doctor has deposed that the claimant sustained 36% disability. The Tribunal assessed the disability as 16%. The petitioner sustained muscle damage which cannot be recovered and the compensation has to be enhanced.

9.On the side of the appellant a judgment of the Hon'ble Supreme Court reported in **2013 (2) TN MAC 338(SC)** in the case of **Master Mallikarjun**



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vs Divisional Manager, National Insurance Co.Ltd. and another, is cited,
wherein it is held that,

" 12.Though it is difficult to have an accurate assessment of the Compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate Compensation on all other heads in addition to the actual expenditure for Treatment, Attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 Lakhs; upto 60%, Rs.4 Lakhs; upto 90%, Rs.5 Lakhs and above 90%, it should be Rs.6 Lakhs. For permanent Disability upto 10%, it should be Rs.1 Lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and Loss of Earning to the parents. "

10.The judgment of the Hon'ble Supreme Court was made, in a case where both the legs of the minor boy was fractured. The fact of the case is different from the fact of the present case and hence the above citation is not applicable to the facts of the present case.



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11. On the side of the appellant, the following judgments are cited:

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- i) **2015 (1) TN MAC 45 (DB)** in the case of **Managing Director, TNSTC Vs Noorjahan and others** is cited,
- ii) **2015(1) TN MAC 315** in the case of **Managing Director, TNSTC Vs B.Maheswari,**
- iii) **2016(1) TN MAC 82** in the case of **Branch Manager, Oriental Insurance Co.Ltd., Chennai Vs Nagoorammal and others,**
- iv) **2022(2) TN MAC 427** in the case of **Branch Manager, National Insurance Co.Ltd., Vs A. Rabbikabanu.**

12. On the side of the respondent it is stated that the appellant has no fracture. He has not undergone any surgery. There was no proof to show that the appellant was treated as inpatient for a period of 50 days. The father of the petitioner has deposed that the petitioner sustained simple injuries. No bone injury was mentioned. The Doctor who gave treatment to the appellant was not examined. P.W.2 has admitted that he did not give any treatment to the appellant. He has also admitted that the appellant has not undergone any surgery. No medical bills are produced on the side of the appellant.



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13. P.W.4 has deposed that the appellant sustained 36% disability.

Ex.P4 is the disability certificate. Considering the fact that P.W.4 did not give any treatment to the appellant and considering the nature of injuries, the Tribunal has brushed aside the disability certificate.

14.The Tribunal has awarded Rs.16,000/- towards compensation for the injuries. Considering the fact that the petitioner suffered muscle loss and considering the age of the claimant at the time of accident, the compensation for the injuries is enhanced to Rs.25,000/-.

15.The Tribunal has awarded Rs.8000/- towards pain and sufferings which is enhanced to Rs.10,000/-. No document was filed on the side of the appellant to prove the medical expenses. The appellant is entitled to Rs. 5,000/- towards loss of amenities. Rs.10,000/- towards attendant charges.

Hence the award is modified as under:

Compensation for the injuries	-	Rs.25,000/-
For pain and sufferings	-	Rs.10,000/-
Loss of amenities	-	Rs. 5,000/-
Attendant charges	-	Rs.10,000/-

Total	-	Rs.50,000/-



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16. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.25,000/- to Rs.50,000/- (Rupees Fifty Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The respondent / Transport Corporation is directed to deposit the entire compensation of Rs.50,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of in M.C.O.P.No.422 of 2002 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge (Fast Track Court No.III), Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellant is directed to pay the additional Court fee for the enhanced amount; The appellant is not entitled for any interest for the default period.



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(iv) On such deposit being made by the respondent / Transport Corporation, the appellant herein/ claimant is permitted to withdraw the entire award amount of Rs. 50,000/- (Rupees Fifty Thousand only) with proportionate interest and cost.

30.11.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal/ Principal Sub Court, Kumbakonam.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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