



C.M.A.(MD)No.231 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 28.10.2022

Delivered On : 09.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.231 of 2013

The Managing Director

Tamil Nadu State Transport Corporation,

Bye-pass Road, Dindigul.

.. Appellant / Respondent

Vs.

Sushmitha alias Sumitha

Minor respondent is declared as major

& guardianship of her father is

discharged vide Court order, dated 24.03.2021,

made in CMP(MD)Nos.2980&2981/2021)

.. Respondent/ Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.230 of 2004, dated 22.03.2007, on the file of the Motor Accident Claims Tribunal / Sub Court, Uthamapalayam.

For Appellant

: Mr.M.Prakash

For Respondent

: Mr.K.Guhan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.230 of 2004, dated 22.03.2007, on the file of the Motor Accident Claims Tribunal / Sub Court, Uthamapalayam. The appellant herein is the respondent and the respondent herein is the claimant in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.230 of 2004, is as follows:

On 24.05.2003, at about 1.30 pm., when the petitioner and his uncle -Devasagayam were walking along the Uthamapalayam to Chinnamanur main road, a bus bearing Registration No.TN-57-0518 came in a rash and negligent manner and dashed against the petitioner. The petitioner sustained injuries. The petitioner was given first aid in Government Hospital, Uthamapalayam and then, she was admitted in Madurai Rajaji Hospital and she took treatment from 24.05.2003 till 22.10.2003 as in patient. The petitioner claimed a sum of Rs.3,00,000/- as compensation.

3. A brief substance of the counter filed by the respondent, in M.C.O.P.No. 230 of 2004, is as follows:-



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The driver of the bus drove the vehicle in a slow and cautious manner, observing the road rules. It was the petitioner, who all of a sudden crossed the road, without observing the traffic. The guardian of the petitioner was not careful enough to take the minor petitioner in a cautious manner. The claim is excessive.

4. 3 witnesses were examined and 10 documents were marked on the side of the petitioner. 1 witness was examined and no document was marked on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.1,64,000/- as compensation to be paid with 9% interest.

5. Against the award, the respondent / appellant has filed this appeal on the following grounds:-

The Tribunal is wrong in relying on the charge sheet and fixed the negligence on the bus driver. The accident has happened only due to the negligence of the injured person, who suddenly crossed the road. The Tribunal has awarded Rs.86,000/- for 86% of disability, again, the Tribunal has awarded Rs.50,000/- for permanent disability, which amounts to double award and is unreasonable. The Tribunal awarded Rs.15,000/- towards other expenses, which is excessive.



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6. On the side of the appellant, it is stated that the rate of interest awarded

by the Tribunal is excessive and the same has to be reduced.

7. On the side of the respondent, it is stated that the bus came from the back side of the respondent. Both her legs were affected, one of her leg has no fingers. The other leg has become shapeless and twisted. The Tribunal has awarded only Rs.1,000/- per percentage of disability. The Court is having the power to *suo-motu* to enhance the compensation amount. A judgment of the Hon'ble Supreme Court reported in *AIR – 2014 -SC-736 (Master Mallikarjun v. Divisional Manager, The National Insurance Co. Ltd.)*, is cited.

8. Present photograph of the claimant was produced on the side of the respondent, at the time of argument. It is seen that the claimant has lost all the toes in one foot and that foot is completely destroyed and the other foot is badly twisted and the claimant is in a pathetic condition. Considering 86% disability and considering the pathetic condition of the claimant, it is decided that the claimant is entitled to loss of income by applying multiplier method.

9. The age of the claimant at the time of accident was 4 years and hence, Rs.15,000/- is taken as the annual income and by applying multiplier '18', it is



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decided that the claimant is entitled to Rs.2,70,000/- towards loss of income. The Tribunal has awarded Rs.10,000/- towards pain and sufferings, Rs.15,000/- towards attender charges and the same is enhanced to Rs.30,000/- and Rs.20,000/- respectively. The Tribunal awarded Rs.264/- towards medical expenses and the same is rounded off to Rs.500/-.

10. The Total compensation is calculated as follows:-

Loss of income	:	Rs.2,70,000/-
Pain and sufferings	:	Rs. 30,000/-
Attender charges	:	Rs. 20,000/-
Medical expenses	:	Rs. 500/-
Total compensation	:	Rs.3,20,500/-

11. It is seen that the Tribunal has fixed the interest at 9% which is excessive and the interest is reduced to 7.5%.

12. The compensation is enhanced from 1,64,000/- to Rs.3,20,500/- and the appeal is disposed of accordingly.

(i) The claimant is entitled to Rs.3,20,500/- as compensation.

(ii) The Transport Corporation is directed to deposit the entire compensation of Rs.3,20,500/- (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the



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date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the Transport Corporation, the respondent herein/ claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by her. No costs.

(iv) The claimant is **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

09.11.2022

Index : Yes/No
Internet : Yes/No
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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal

Sub Court, Uthamapalayam.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.231 of 2013

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