



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

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C.M.A. (MD)Nos. 383 of 2019 and 198 of 2021
and C.M.P (MD)No.1683 of 2021

C.M.A(MD)No.383 of 2019:

MINOR DESHIKA, D/O.S.GANESH,,
6A MUSLIM KEELATHERU MADURAI MANDAPAM ,
HIGHWAY THIRUPUVANAM PUDUR THIRUPUVANAM ,
TOWN SIVAGANGAI DT. MINOR REP BY FATHER
S. GANESH

... Appellant / Claimant

Vs.

1. The Tamilnadu State Transport Corporation Ltd.,
Rep. by its Managing Director,
Having Office at Bye Pass Road,
Madurai - 625 106

2. Gunasekar

3.M/s.Oriental Insurance Company Ltd.,
Rep. by its Regional Manager,
Having Office at Kudiatham Velloor
(policy No.413503/31/2016/1167)

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 30.08.2018 passed in M.C.O.P.No.46 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.

For Appellant	: Mr.H.Velavadhas
For R1	: Mr.K.Sudalayandi
For R3	: Mr.C.Jawahar Ravindran
For R2	: No appearance

C.M.A(MD)No.198 of 2021:

The Tamilnadu State Transport Corporation,
Through its Managing Director,
Bye Pass Road,
Madurai District

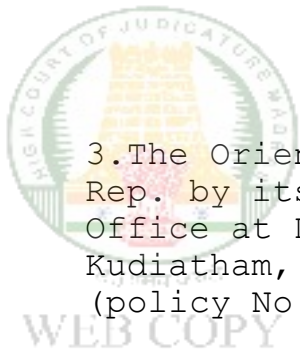
... Appellant/1st Respondent

Vs.

1. Minor Deshika
D/o S.Ganesh .. 1st Respondent/Petitioner
(The minor respondent is represented through her father/next guardian S.Ganesh)

2. Gunasekar

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Oriental Insurance Company,
Rep. by its Regional Manager,
Office at Door No.15, RS Road,
Kudiatham, Velloor
(policy No.413503/31/2016/1167)

... Respondents 2 & 3/Respondents 2 & 3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 30.08.2018 passed in M.C.O.P.No.46 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.

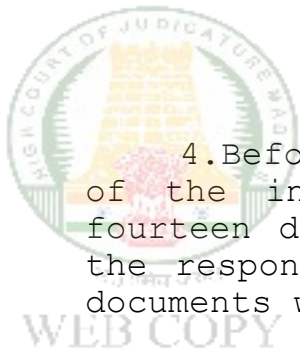
For Appellant	: Mr.K.Sudalayandi
For R1 & R2	: No appearance
For R3	: Mr.C.Jawahar Ravindran

C O M M O N J U D G M E N T

The claimant in M.C.O.P.No.46 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai, has filed C.M.A.(MD)No.383 of 2019 for enhancement of compensation. The Tamilnadu Transport Corporation has filed C.M.A (MD)No.198 of 2021 on the ground that the driver of the Transport Corporation bus did not commit any negligence for the accident and hence, the Transport Corporation is not liable to pay compensation.

2. According to the appellant in C.M.A(MD)No.383 of 2019/claimant, on 13.03.2016 at about 11.00 p.m, the petitioner with her parents travelled in Omini Bus bearing Registration No. TN-30-AZ-2553 at Madurai Mattuthavani. When the Omini Bus went near Ulundurpettai at about 4.30 a.m on 14.03.2016 in Trichy-Chennai National Highways Road, the Omni bus dashed on the Mahendra Van went before it and caused accident. Due to that accident, all the passengers in the Omni Bus were got down from the bus and they were standing in front of the bus and at that time, a Government bus bearing Registration No.TN-58-N-1849 came in the National Highways driven by its driver in a rash and negligent manner and dashed on the passengers, who were standing in front of the bus and caused injuries to the claimant and some others. The claimant sustained grievous injuries in her hip and legs. Due to the said accident, her urine bag was damaged and she is not able to pass urine and her uterus was also damaged.

3. The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments on either side, directed the Transport Corporation to pay a sum of Rs.2,55,000/- (Rupees two lakhs and fifty five thousand only) as compensation with interest at the rate of 7.5 %.



4. Before the Tribunal, on the side of the claimant, the father of the injured minor child was examined himself as P.W.1 and fourteen documents were marked as Ex.P1 to Ex.P14. On the side of the respondents therein, one witness was examined as R.W.1 and no documents were marked.

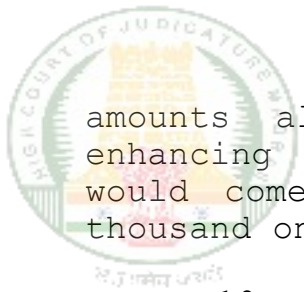
5. As far as the appellant/Transport Corporation in C.M.A(MD) No.198 of 2021 is concerned, the learned counsel would mainly argue that the Omni bus was parked on the National Highways road without any indication, which leads to the accident and hence, the driver of the Omini bus was also responsible for the accident. According to him, the Tribunal ought not to have fixed entire liability on the State Transport Corporation bus.

6. The learned counsel for the appellant/claimant in C.M.A(MD) No.383 of 2019 would argue that the accident happened due to rash and negligent driver of the Government Bus bearing Registration No. TN-58-N -1849. It is further submitted that due to accident, the claimant's urine bag was damaged and her uterus was also damaged; since her hip portion and two legs were affected, she is not able to walk, drive cycle and her education is also spoiled. Hence, he prays for enhancement of compensation.

7. Heard the parties in two appeals and perused the materials available on record.

8. It is seen that First Information Report was registered against the driver of the Bus as he came in rash and negligent manner and dashed on back side of the parked Omni Bus. On a perusal of Motor Vehicle Inspector's report, it is seen that backside of the Omni bus and front side of the Transport Corporation bus were damaged. The driver of the State Transport Corporation bus was not examined. Without any evidence, the State Transport Corporation cannot claim that the Tribunal ought not to have fixed the entire liability. The Tribunal has rightly fixed the liability on the Transport Corporation Bus. Considering the same, C.M.A(MD)No.198 of 2021 is dismissed by confirming the liability fixed by the Tribunal.

9. As far as the appeal filed by the claimant for enhancement of compensation is concerned, the learned counsel for the claimant contended that the urine bag and uterus of the minor claimant were damaged. So the Tribunal ought to have awarded more compensation. But the Doctor was not examined and no discharge summary was produced by the claimant. The claimant ought to have examined the Doctor to prove that the uterus and urine bag were damaged. Without the evidence of Doctor, the Tribunal awarded Rs.1,00,000/- (Rupees one lakh only) for pain and suffering. Since the age of the claimant is 4 years and she sustained grievous injuries, this Court is inclined to grant another Rs.1,00,000/- (Rupees one lakh only) under 'Pain and suffering'. Under all other heads, the



amounts already granted by the Tribunal is confirmed. After enhancing Rs.1,00,000/- (Rupees one lakh only), total compensation would come to Rs.3,55,000/- (Rupees three lakhs and fifty five thousand only).

10. The Transport Corporation is directed to deposit the enhanced amount of compensation within a period of eight weeks from the date of receipt of a copy of the judgment. Since the claimant is minor, the compensation amount shall be deposited in a nationalized bank till she attains majority. The guardian of the minor shall withdraw interest for the compensation amount in every three months from the bank.

11. In the result, the Civil Miscellaneous Appeal in C.M.A(MD) No.383 of 2019 is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is ordered.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

CM

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 CHIEF JUDICIAL MAGISTRATE,
MOTOR ACCIDENT CLAIMS TRIBUNAL,
SIVAGANGAI

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.K.SUDALAIYANDI, Advocate (SR-2095[F],2095 dated 21/01/2022)



+1 CC to M/s.C.ILANKALESWARAN, Advocate (SR-2512[F] dated
25/01/2022)

C.M.A. (MD) Nos. 383 of 2019 and 198 of 2021
and C.M.P (MD) No.1683 of 2021
21.01.2022

KMK (CO)

KB(07.04.2022) 5P 7C