



C.M.A(MD)No.455 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 27.06.2022

Pronounced on : 20.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.455 of 2019

and

C.M.P.(MD)No.5497 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai.

... Appellant

Vs

1.Rajendran @ Raju

2.V.Sakthivel

3.The Branch Manager,
National Insurance Company Limited,
Door No.5A, Sub Collector Office Road,
Opposite to District Court,
Dindigul - 624 001.

... Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the award and decree made in M.C.O.P.No.1099 of 2012 dated 10.10.2017 on the file of the Motor accident claims Tribunal / Chief Judicial Magistrate Court, Madurai.



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For Appellants : Mr.P.Prabhakaran

For R1 and R2 : Mr.A.S.Mathialagan

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.1099 of 2012 dated 10.10.2017 on the file of the Motor accident claims Tribunal / Chief Judicial Magistrate Court, Madurai. The appellant herein is the first respondent. The first respondent herein is the claimant. Respondents 2 and 3 are the respondents 2 and 3 in the claim petition.

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

On 13.01.2011, the claimant was travelling in a bus bearing registration No.TN 58 N 1840, at about 6.40 p.m., the bus driver tried to overtake a lorry bearing registration number TNN 9400 in a rash and negligent manner. The lorry driver also did not reduce the speed. The bus dashed against the lorry and that the wrist of the petitioner was cut off. The petitioner was admitted in Meenakshi Mission Hospital and after taking first aid, he was admitted in Ganga Medical Centre, Coimbatore, as inpatient from 14.01.2011 till



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26.01.2011, where he has undergone surgery and then again he was admitted as inpatient from 01.08.2011 till 15.08.2011 and again he was admitted from 24.08.2011 till 27.08.2011. The petitioner sustained functional disability. He could not carry heavy weight. The age of the petitioner was 24 years. He was doing goldsmith work. He could not continue his profession now and he claimed a sum of Rs.7,00,000/- as compensation.

3.Brief substance of the counter filed by the first respondent is as follows:

The bus driver drove the vehicle in a moderate speed. When the bus tried to overtake the lorry, as there was a pit, on the left side of the road. The lorry suddenly turned to the right side. The petitioner was keeping his hand outside the window. The iron rod from the lorry hit the hand of the petitioner. There is no damage to both the vehicles and no injury to any other passenger. The accident was not due to the negligence of the bus driver. and prayed the petition to be dismissed.

4.Brief substance of the counter filed by the third respondent is as follows:



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The accident took place not due to the negligence of the second respondent. The First Information Report was against the first respondent's driver. The petitioner, without observing the road rules, placed his hand outside the bus and he sustained injury only due to his negligence. The vehicle bearing registration number TNN 9400 was not insured with the third respondent. The lorry driver after paying the Toll Gate charges, was moving the lorry in a slow speed, it was the bus driver who was rash and negligent and caused the accident. The First Information Report was registered only against the bus driver. The third respondent is not liable to pay any compensation and prayed the petition to be dismissed.

5.Two(2) witnesses were examined and twenty one(21) documents were marked on the side of the petitioner. One(1) witness was examined and no document was marked on the side of the respondent. Two(2) Court documents were marked as Ex.X1 and X2. The Tribunal awarded a sum of Rs.6,04,600/- as compensation. Against the award, the appellant has filed this appeal on the following grounds:



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6.The Tribunal has erred in fixing contributory negligence on the claimant who was sitting near the left side window and protruding his hand outside the bus. The driver of the lorry was responsible for the accident. The injured and the driver of the lorry were responsible for the accident. But the Tribunal wrongly fixed the entire responsibility on the bus driver. The award is excessive. The Tribunal has erred in fixing 50% partial permanent disability, instead of fixing compensation for the disability at the ratio of Rs.3,000/- per percentage. The Tribunal has awarded Rs.30,000/- towards loss of income during the period of treatment. The Tribunal awarded Rs. 2,22,600/- towards medical expenses, Rs.75,000/- towards pain and sufferings. Rs.40,000/- towards extra nourishment. Rs.30,000/- towards transport expenses. Rs.25,000/- towards dependent charges, Rs.2,000/- towards loss of dress and articles. Rs.30,000/- towards future medical expenses which are all too excessive.

7.On the side of the appellant, it is stated that, in the claim petition, it is clearly stated that both the driver of the lorry and the driver of the bus drove the vehicle in a rash and negligence manner. Both of them are responsible for the accident. When the bus was trying to overtake the lorry, the lorry driver



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failed to reduce the speed and contributory negligence has been fixed on the driver of the lorry. The lorry driver was not examined as a witness. The claimant is a passenger and the claimant was keeping his hand, protruding outside the bus and hence contributory negligence is to be fixed on the lorry driver and on the claimant.

8.On the side of the respondent it is stated that the claimant kept his hand outside the window. The driver of the bus did not maintain safety distance while over taking the lorry. The First Information Report is against the driver of the bus. There is no contributory negligence on the part of the driver of the lorry. It was the bus driver who was negligent while over taking another vehicle. The lorry driver was proceeding on his way there was no negligent on his part.

9.On the side of the respondent, a judgment of this Court reported in **2018(2)TN MAC 652** in the case of **Jayachandran vs General Manager, Tamil Nadu State Transport Corporation, Trichy-1**, is cited, wherein "*No dispute that Claimant was resting his hands on window and Lorry coming from opposite direction hit his hand resulting in grievous injuries- No sufficient space left by Bus Driver to enable any vehicle from opposite*



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direction to move freely - Contributory Negligence attributable on part of Bus Driver - Decision in P.Ilayaraja squarely applicable - High Court fixed Contributory Negligence on part of Bus Driver and injured-Claimant at 80% and 20% respectively ie., in ratio of 80:20.

10. On the side of the appellant it is stated that as per the evidence of the claimant, both the drivers are responsible for the accident and that the bus driver was examined as a witness but the lorry driver was not examined as a witness and that the non-examination of the lorry driver is fatal.

11. It is seen that accident has happened when the bus was trying to overtake the lorry. The allegation is that the lorry driver did not reduce the speed while the bus was over taking. It is the duty of the person who is over taking another vehicle to verify sufficient space was given for overtaking the vehicle. The Ex.P1 is against the bus driver. It is seen that nobody else was injured in the accident, except the claimant. The wrist portion of the claimant was injured, which reveals that the claimant was keeping his hand outside the window at the time of accident. There is contributory negligence on the part of the claimant. The negligence on the part of the claimant is fixed as 10%.



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12. On the side of the appellant, it is stated that for 50% disability, the Tribunal ought to have fixed only Rs.1,50,000/- as compensation. But the Tribunal has adopted multiplier method to fix the loss of income. It is seen that the claimant is a goldsmith and the function of the left hand is very much necessary for doing his job.

13. Considering the evidence of P.W.2 and considering Ex.P.21, the Tribunal has fixed the disability at 50% which is reasonable. For the functional disability the Tribunal has awarded Rs.1,50,000/- which is very reasonable. The injured was admitted in the hospital and five times he was under treatment as inpatient. The petitioner was taking treatment as inpatient now and then from 14.01.2011 till 12.08.2013. The Tribunal has awarded Rs. 30,000/- towards temporary loss of income for the period of treatment which is very reasonable. The Tribunal has awarded Rs.75,000/- towards pain and sufferings and the same is hereby reduced to Rs.50,000/-. Considering the period of treatment, the amount fixed by the Tribunal towards extra nourishment at Rs.40,000/- is reasonable. The Tribunal has awarded Rs. 2,000/- towards damages to cloth and articles, Rs.25,000/- towards attendant charges which are all reasonable. There is no evidence as to future medical



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expenses. Hence the amount for future medical expenses is reduced to Rs.

10,000/-. The amount of compensation is re-fixed as follows:

Permanent disability(50%)	-	Rs.1,50,000/-
Temporary loss of income	-	Rs. 30,000/-
Medical expenses	-	Rs.2,22,600/-
Pain and sufferings	-	Rs. 50,000/-
For extra nourishment	-	Rs. 40,000/-
Transport expenses	-	Rs. 30,000/-
Damage to cloth and articles	-	Rs. 2,000/-
Attendant charges	-	Rs. 25,000/-
Future medical expenses	-	Rs. 10,000/-
Total	-	Rs.5,59,600/-
Rounded off	-	Rs.5,60,000/-

After deducting 10% towards claimant's contributory negligence (Rs.5,60,000 - 56,000), the award amount is calculated as **Rs.5,04,000/-** (**Rupees Five Lakhs Four Thousand only**).

14.The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced



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from Rs.6,04,600/- to Rs.5,04,000/- which shall carry interest at the rate of 7.5% per annum.

(ii) It is stated that the entire amount was already deposited by the appellant. Hence, the appellant is entitled to refund of excess amount, if any, already deposited by the appellant.

(iii) On such deposit being made by the appellant Transport Corporation, the first respondent is permitted to withdraw the entire award amount, along with proportionate interest and cost. Consequently, connected miscellaneous petition stands closed.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor accident claims Tribunal / Chief Judicial Magistrate Court,
Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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**Pre - Delivery Judgment made in
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