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C.M.A(MD)No.676 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.06.2022

Pronounced on : 01.07.2022

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

C.M.A(MD)No.676 of 2019

and

C.M.P.(MD)No. 8254 of 2019

Tamil Nadu Express Transport Corporation,
through the Managing Director
having its office at
Pallavan Illam,
Chennai- 600 002.

... Appellant

Vs

Shanmugarajan

... Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor vehicle Act, to set aside the judgment and decree made in M.C.O.P.No. 71 of 2015 dated 04.02.2019. passed by the Motor Accident Claims Tribunal / Subordinate Court, Aruppukottai.

For Appellant : Mr.P.Prabhakaran

For Respondent : Mr.S.J.Chakkaravarthy



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JUDGMENT

This appeal is filed against the order in M.C.O.P.No.71 of 2015 on the file of the Subordinate Court, Aruppukottai. The appellant is the respondent and the respondent is the claimant in the claim petition.

2.The brief substance of the claim petition is as follows:

On 21.06.2015, when the petitioner was travelling in the respondent's bus bearing Registration number TN 01 N 4798 from Madurai to Chennai at about 2 a.m., near Perambalur, the driver of the bus drove the bus in a rash and negligent manner and thereby the front left tyre of the bus burst and the bus toppled into a ditch on the left side of the road. The petitioner sustained multiple injuries and fracture in his left leg. He took first aid in Perambalur Government Hospital and then he was admitted in Devados Hospital at Madurai and took treatment as inpatient from 21.06.2015 till 03.07.2015. The petitioner claimed a sum of Rs.7 Lakhs as compensation.

3.Brief substance of the counter filed by the respondent/Transport Corporation, is as follows:



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The accident took place due to the act of God. The driver is not responsible for the burst of tyre. The bus driver drove the vehicle in a slow and cautious manner, observing the traffic rules. The amount claimed is excessive.

4. One witness was examined and 17 documents were marked on the side of the petitioner / claimant. One witness was examined and no document was marked on the side of the respondent / Transport Corporation. One document was marked as Ex.C.1. The Tribunal awarded a sum of Rs. 6,93,761/- as compensation. Against the award, the appellant has filed this appeal.

5. On the side of the appellant, it is stated that the accident took place due to the act of God. Bursting of the front tyre will not make any liability on the part of the driver. Without considering the factual aspect, the Tribunal has wrongly fixed the liability on the appellant. The award amount is excessive. The Tribunal has awarded Rs.3,000/- per percentage of disability. At the same time, the Tribunal has adopted multiplier method, fixed loss of income, fixed the rate of interest at 9%. The Tribunal has fixed the disability as 34%



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and at the same time, the Tribunal fixed the loss of income at the rate of Rs. 350/- per day and awarded loss of income for a period of 24 months. The Tribunal awarded Rs.1 Lakh towards pain and sufferings. The award amount under various other heads is too excessive.

6.On the side of the respondent it is stated that the claimant sustained injuries and three bones in the left thigh were fractured. The Tribunal did not apply multiplier method. The Tribunal has awarded Rs.2,52,000/- towards temporary loss of income for a period of two years and the amount awarded under various heads were reasonable and pray the appeal to be dismissed.

7.It is seen that the accident took place due to the burst of the front wheel tyre. It reveals that the vehicle was not properly maintained by the Transport Corporation and the same is not an Act of God. Hence the Transport Corporation is liable to pay compensation to the respondent.

8.The award amount fixed by the Tribunal is modified as under:

(i)The Tribunal has awarded a sum of Rs.3,000/- per percentage of disability. The Tribunal fixed the disability at 34% and awarded a sum of Rs.1,02,000/- towards the disability which is reasonable.



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(ii) The Tribunal has awarded Rs.2,52,000/-, by calculating Rs.350/- per day, for a period of two years, towards temporary Loss of earning. There may be a temporary loss for a period of one year for the period of treatment and for the period of rehabilitation and hence the amount is reduced to Rs.1,26,000/- (350 x 30 x 12).

(iii) The amount awarded towards pain and sufferings is excessive and the same is reduced to Rs.50,000/-.

(iv) The Tribunal has fixed the rate of interest at 9.5% which is excessive and the rate of interest is reduced to 7.5%.

(v) The amounts awarded under various other heads are reasonable.

9.The award is modified as follows:

	Modified Award Amount in this CMA
Medical Bills and Medical Expenses	Rs.2,05,421
Loss of earnings for 13 days 13 x Rs. 350/-	Rs.4,550/-
Loss of Future Earning Capacity for a period of one year	Rs.1,26,000/-
Transport Expenses	Rs.3,790/-
For the Partial Permanent Disability	Rs.1,02,000/-
For pain and sufferings	Rs.50,000/-
For damages to dress and belongings	Rs.1,000/-



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For the expenses of nutritious food	Rs.10,000/-
For the expenses of Medical help attendant	Rs.5,000/-
For future medical expenses	Rs.10,000/-
Total	Rs.5,17,761/-

Hence, the award amount is reduced to Rs.5,17,761/- rounded off to **Rs.5,18,000/-** (Rupees Five Lakhs Eighteen Thousand only).

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

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.6,93,761/- to Rs.5,18,000/-(Rupees Five Lakhs Eighteen Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant Transport Corporation, is directed to deposit the entire compensation of Rs.5,18,000/- (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 with costs to the credit of M.C.O.P.No.71 of 2015 on the file of the Motor Accident Claim Tribunal (Subordinate Judge), Aruppukottai, within a period of eight weeks from the date of receipt of a copy of this order, less any amount already deposited.



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(iii) On such deposit being made by the appellant/transport corporation, the respondent / claimant is permitted to withdraw the entire award amount, along with proportionate interest and cost less any amount already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any. Consequently, connected miscellaneous petition stands closed.

01.07.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Judge, Motor Accident Claims Tribunal / Subordinate Court,
Aruppukottai.
- 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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