



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.10.2021

Delivered on : 04.01.2022

CORAM:

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

WEB COPY

C.M.A(MD) No.512 of 2014

and

M.P.(MD)No.2 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Limited),
Karaikudi.

... Appellant/1st Respondent

Vs.

1.S.Nagarajan

2.Selvarani

3.Royal Sundaram Alliance Insurance Company Limited,
Krishnarayer Tank Road,
Madurai-625 001.

...Respondents / Petitioner &
Respondents 2 & 3

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the judgment and decree dated 08.10.2012 passed in M.C.O.P.No.1097 of 2010 on the file of the Motor Accidents Claims Tribunal / IVth Additional Sub Court Madurai.

For Appellant	: Mr.P.Prabhakaran
For R1	: Mr.M.P.Senthil
R2	: Dismissed vide order dated 15.07.2016
For R3	: Mr.M.E.Ilango

JUDGMENT

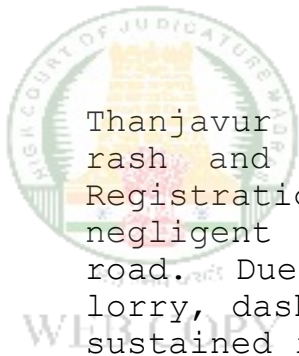
This Civil Miscellaneous Appeal is filed against the award, dated 08.10.2012 passed in M.C.O.P.No.1097 of 2010 on the file of the Motor Accidents Claims Tribunal / IV Additional Sub Court Madurai.

2. The appellant herein is the first respondent, the first respondent herein is the claimant, the respondents 2 and 3 herein are the respondents 2 and 3 in the claim petition.

3. Brief substance of the petition, in M.C.O.P.No.1097 of 2010 is as follows:

On 13.11.2009, at about 4.50 am., when the petitioner was travelling as a passenger in the Tamil Nadu State Transport Corporation Ltd., bus, bearing Registration No.TN-63-N-1281 from

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



Thanjavur to Madurai, the driver of the bus drove the vehicle in a rash and negligent manner and at that time, a lorry bearing Registration No.TN-50-D-7705 was driven by its driver in a rash and negligent manner, suddenly stopped the lorry on the middle of the road. Due to that impact, the bus, which was closely following the lorry, dashed against the rear portion of the lorry. The petitioner sustained injuries and permanent disability and he claimed a sum of Rs.3,00,000/- as compensation.

4. Brief substance of the counter of the first respondent, in M.C.O.P.No.1097 of 2010, is as follows:

The place, date, time of accident and manner of accident are all denied. The vehicle of the first respondent was proceeding on the proper side of the road in a moderate speed, by observing the traffic rules and regulations. The vehicle/ lorry that belonged to the second respondent was driven by its driver in a rash and negligent manner and the driver of the lorry suddenly stopped the lorry on the middle of the road, without any signs or signals. Though the first respondent's driver tried to stop the bus, the bus dashed against the lorry on the rear side. The accident took place only due to negligent driving of the second respondent driver and the first respondent is not liable to pay compensation.

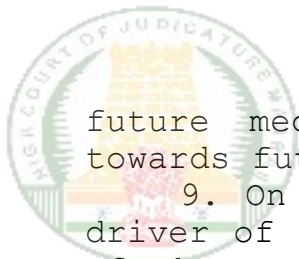
5. Brief substance of the counter of the third respondent, in M.C.O.P.No.1097 of 2010, is as follows:

The second respondent's driver was driving the lorry in a careful and cautious manner. The accident occurred only due to the negligence of the first respondent's driver. F.I.R was lodged only against the first respondent's driver. It is wrong to state that the second respondent's driver suddenly stopped the vehicle on the middle of the road and that the petition to be dismissed.

6. The second respondent remained exparte. On the side of the petitioner, four witnesses were examined and eleven documents were marked. On the side of the first respondent, one witness was examined and no document was marked.

7. After considering both sides, the Tribunal, awarded a sum of Rs.2,05,622/- as compensation to be paid by the first respondent / Transport Corporation. Against the same, the first respondent / appellant has approached this Court by way of this Appeal.

8. On the side of the appellant, it is stated that the Tribunal failed to fix the entire negligence on the part of the lorry driver, who negligently stopped the vehicle on the middle of the road, without any sign or signal. The award under various heads is excessive. The award towards loss of amenities and for social pleasure amounts to double compensation. The amount awarded towards medical expenses is excessive. The medical bills available is only for Rs.18,641/-, but, the Tribunal has awarded Rs.26,622/- towards medical expenses. Without any evidence as to the necessity for



future medical treatment, the Tribunal has awarded Rs.15,000/- towards future medical expenses. The total award is excessive.

9. On the side of the appellant, it is further stated that the driver of the lorry, who suddenly stopped the vehicle on the middle of the road, without any signs or signals is also responsible for the accident. But, the Tribunal has wrongly fixed the liability only on the bus driver.

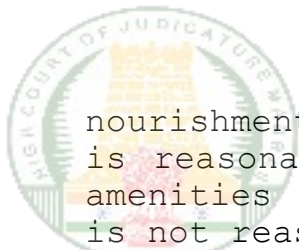
10. On the side of the first respondent / claimant, it is stated that the claimant has undergone two surgeries and the quantum fixed is reasonable and that the negligence is both on the appellant and on the second respondent lorry driver.

11. On the side of the third respondent / Insurance Company, it is stated that the bus dashed against the rear portion of the lorry, the driver of the bus alone is responsible for the accident. There is no negligence on the part of the driver of the lorry. Even in the F.I.R., no averment was suggested against the lorry driver.

12. In the evidence of P.W.1 and R.W.1, it is stated that the lorry driver stopped the vehicle on the middle of the road, without any signs or signals. R.W.1 is the bus driver. P.W.1 is a passenger in the bus. If the bus driver was keeping sufficient distance between the vehicles, the accident would have been avoided. It is the duty of the following vehicle to be more cautious and careful. In the above circumstances, it is decided that the bus driver is responsible for the accident. The F.I.R is registered against the bus driver and it was the bus driver, who ought to have been more responsible in following the lorry. Hence, negligence is fixed on the part of the driver of the bus.

13. On the side of the appellant, it is stated that the award is excessive. P.W.4 has deposed that there was 64% partial permanent disability. Discharge summary were marked as Ex.P2 and Ex.P3. Case sheets were marked as Ex.P7 to Ex.P9. Disability Certificate was marked as Ex.P10. X-Ray was marked as Ex.P11. From the above said documents and from the evidence of P.W.4, it is decided that the claimant sustained 64% partial permanent disability. For the disability, the claimant is entitled to Rs.2,000/- per percentage and for 64% disability, the claimant is entitled to Rs.1,28,000/- ($\text{Rs.2,000/-} \times 64\% = \text{Rs.1,28,000/-}$) as compensation for the disability.

14. On the side of the appellant, it is stated that the Tribunal has awarded Rs.26,622/- towards medical expenses. But, the medical bills / Ex.P5 are only for Rs.18,642/-. It is seen that the claimant was admitted as inpatient twice ie. From 13.11.2009 till 18.11.2009 and from 01.05.2010 till 03.05.2010 and he has undergone two surgeries ie. On 14.11.2009 and on 01.05.2010. The claimant has undergone two surgeries and hence, compensation for the medical expenses is fixed at Rs.25,000/-. Evidence of P.W.4/ Doctor, reveals that plates and screws were inserted in the left leg and to remove the same further treatment is necessary. A sum of Rs.15,000/- was fixed by the Tribunal for future medical expenses and the same is reasonable. The Tribunal has awarded Rs.1,000/- towards transport expenses, Rs.5,000/- towards extra



nourishment and Rs. 20,000/- for pain and sufferings and the same is reasonable. The Tribunal has awarded Rs.10,000/- for loss of amenities and Rs.10,000/- for loss of social pleasure and the same is not reasonable.

15. In total, the claimant is entitled to Rs.1,94,000/- as compensation. This Civil Miscellaneous Appeal is partly allowed and the award, passed in M.C.O.P.No.1097 of 2010 on the file of the Motor Accidents Claims Tribunal / IV th Additional Sub Court Madurai, **is modified as Rs.1,94,000/-**.

16. The appellant / Transport Corporation is directed to deposit the compensation amount, **ie.Rs.1,94,000/-** along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the major claimant is permitted to withdraw the entire amount, after deducting any amount received by him earlier. Excess amount, if any deposited shall be refunded to the appellant. The claimant is not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ls

To

1.The IV Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Madurai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-123[F] dated 04/01/2022)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-118[F] dated 04/01/2022)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-308[F] dated 05/01/2022)

C.M.A(MD) No.512 of 2014

04.01.2022

MGJ(24.01.2022) 4P 7C