



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.806 of 2023
and C.M.P.No.7449 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
3/37, Salamedu, Vazhuthareddy & Post,
Villupuram Taluk,
Tamil Nadu 605 402. ... Appellant

Vs.

Rabekalmary ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 20.10.2021 passed in M.C.O.P.No.516 of 2015 on the file of the Motor Accident Claims Tribunal, Special Officer-cum-Additional Sub Judge, Puducherry.

For Appellant : M/s.J.Tamilselvi

For Respondent : Mr.D.Senthilkumar

JUDGMENT

The Transport Corporation has filed this Civil Miscellaneous Appeal challenging both negligence as well as quantum of compensation.



WEB COPY

2. The brief facts of the case are that on 25.01.2015 at 02.00 a.m., while the claimant was traveling as a passenger along with her husband in the Transport Corporation bus, the driver of the bus drove the bus in a rash and negligent manner and narrowly missed two persons standing with their motor cycle on the road. The two persons in fit of anger, tried to overtake the bus and pelted stones on the bus which hit the claimant causing her head injuries. The claimant was running a Tiffen shop at Kirumampakkam and earning a sum of Rs.200/- per day and therefore she filed the claim petition, claiming a sum of Rs.10,00,000/- as compensation for the head injuries sustained by her in the accident.

3. The respondent Transport Corporation filed a counter denying all the averments in the claim petition apart from specifically denying the negligence as well as quantum.

4. Before the Claims Tribunal, the petitioner examined herself as P.W.1 and her husband was examined as P.W.2 and Ex.P1 to P7 were marked on the side of the claimant. On the side of respondent, the driver was examined as R.W.1 and no document was marked.



5. The claims Tribunal on an assessment of the evidence on record held that the transport corporation cannot wriggle out of its liability as the claimant sustained injuries while she was travelling in the bus. The Tribunal awarded Rs.1,48,112/- along with interest at the rate of 7.5% per annum as compensation and mulcted the liability on the transportation corporation.

6. Aggrieved by the award of the Tribunal the transport corporation has filed the appeal challenging both negligence as well as quantum of compensation. The learned counsel for the transport corporation submitted that the F.I.R., filed by the driver of the Transport Corporation bus clearly showed that the injuries sustained by the claimant were because of pelting of stones by unknown persons. Therefore, the learned counsel submitted that in the absence of the proof of negligence, the Transport Corporation could not be made liable for the compensation. On the quantum of compensation, the learned counsel submitted that the award under various heads were exorbitant and therefore, the award deserved to be modified.

7. The learned counsel for the claimant submitted that the Claims



Tribunal relied on the judgments of this Hon'ble Court and the Hon'ble Supreme Court and categorically found that as the injuries sustained by the claimant arose out of the use of Motor vehicle (i.e) the bus in which the injured claimant was traveling as passenger, the transport corporation was liable to compensate. On the quantum of compensation the learned counsel submitted that the amounts awarded by the Tribunal were fair and reasonable and did not call for any interference by this Court.

8. It is not disputed that the claimant was traveling as a passenger in the Transport Corporation bus. As the driver of the bus nearly knocked down two persons standing with their motor cycle, while driving the bus in a rash and negligent manner, the said persons in a fit of rage chased the bus and pelted stones at the bus, which hit the claimant causing her grievous injuries. The driver was examined as P.W.1 and Ex.P.1, F.I.R., was filed to establish that the driver of the bus was not negligent. It is to be noted that the F.I.R., was filed by the driver of the bus and in the absence of any independent evidence reliance cannot be placed on the F.I.R. Eventhough the driver was examined as R.W.1, in my view his evidence is interested. It is trite that a claim petition arising out of the use of a motor vehicle can form the basis of a



WEB COPY

claim. The Madurai Bench of Madras High Court in *IFFCO Tokyo*

General Insurance Company Vs. Joes Antony and others reported in

2018 2 TNMAC under similar circumstances held that there was distinction with regard to the injury sustained out of accident caused by motor vehicle and injury arising of use of motor vehicle. In my view the aforesaid judgment of the Madurai Bench of Madras High Court squarely applies to this case and therefore I find that transport corporation is liable. Hence, the contention of the learned counsel for appellant Transportation Corporation is rejected. On the quantum of the compensation, considering the nature of injuries sustained by the claimant, her age and the period of treatment undergone by her, I am of the view that compensation awarded by the Tribunal is reasonable and does not call for any interference. The appeal is dismissed as meritless . No costs. Consequently, connected miscellaneous petition is closed.

05.04.2023

jai

Index: yes/no

Internet:yes/no

Speaking Order: Yes/No



WEB COPY



N.MALA, J.

jai

To

The Motor Accident Claims Tribunal,
Special Officer Cum Additional Sub Judge,
Puducherry.

C.M.A.No.806 of 2023

05.04.2023