



C.M.A.(MD)No.264 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.264 of 2023

and

C.M.P.(MD)No.3137 of 2023

The Executive Engineer (PWD),
Building C and M Division,
Nagapattinam.

... Appellant / 1st Respondent

Vs.

1.S.Nagarajan

... 1st respondent / Claimant

2.The District Collector,
Office of District Collector,
Nagapattinam.

.. 2nd Respondent / 2nd Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the judgment and decree passed in M.C.O.P.No.622 of 2021, dated 18.08.2022 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Tanjore.

For Appellant : Mr.D.Sasikumar

For Respondents : No Appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed challenging the judgment and decree passed in M.C.O.P.No.622 of 2021, dated 18.08.2022 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Tanjore.

2. For the sake of convenience, the parties are arrayed as per their own ranking before the Tribunal.

3. The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

The petitioner while returning in his Motorcycle, bearing Registration No.TN-49-BT-3546, on 12.09.2020 at about 10.00 a.m., the driver of the Bolero Jeep, bearing Registration No.TN-51-G-0552, belonging to the first respondent Department, came in a rash and negligent manner and dashed against the Motorcycle. As a result, the petitioner sustained injuries and he was immediately admitted in the Thanjavur Medical College as inpatient. A case has also been registered in Crime No. 528 of 2020, on the file of the Vaipur Police Station, against the driver of the Bolero Jeep.



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4. Before the Tribunal, it is the case of the first respondent that the Bolero Jeep was driven by its driver in a cautious manner and the petitioner was driving his Motorcycle in an inebriated condition. On noticing the same, when the driver of the vehicle stopped the Bolero Jeep, the petitioner came in a rash and negligent manner and dashed against the vehicle. Therefore, he disputed the liability.

5. On the side of the petitioner, one witness was examined as P.W.1 and 11 documents were marked as Ex.A1 to Ex.A.11. On the side of the respondents, one witness was examined as D.W.1 and three documents were marked as Ex.B1 to Ex.B3 and Ex.C1 is also marked as Court exhibits.

6. The Tribunal, based on the evidence of P.W.1, has fixed 90% negligence on the part of the driver of the Bolero Jeep and 10% negligence on the part of the petitioner. Further, on the basis of the medical evidence and the nature of the injuries sustained by the petitioner, awarded the compensation as follows:

S.No	Heads	Amount
1.	For disability	Rs.2,75,000/-
2.	For pain and suffering	Rs.1,00,000/-
3.	Loss of income	Rs. 30,000/-
4.	For Nutrition	Rs. 15,000/-



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5.	For Attendant charges	Rs. 10,000/-
6.	Loss of comfort	Rs. 50,000/-
7.	For damages to cloth	Rs. 2,000/-
8.	For Transport Expenses	Rs. 10,000/-
	Total	Rs.4,92,000/-

Challenging the liability fixed on the part of the Government Vehicle, the present appeal came to be filed by the first respondent.

7. The learned Additional Government Pleader appearing for the first respondent / appellant submitted that the injured himself caused the accident in an intoxicated mode. This fact has been clearly admitted by the P.W.1 in his cross examination. However, the Tribunal fixed 90% negligence on the part of the driver of the first respondent's vehicle. Therefore, the finding of the Tribunal warrants interference.

8. Despite notice has been served on the petitioner and the second respondent and their names have also been printed in the cause list, there is no representation on behalf of them.

9. In the light of the submissions of the learned counsel appearing for the first respondent / appellant, now the point arise for consideration in this appeal is



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whether the Tribunal is right in fixing 90% negligence on the part of the driver of the first respondent's vehicle?

10. It is not disputed that the accident took place on 12.09.2020. It is the specific contention of the learned counsel appearing for the first respondent / appellant that the injured was riding his Motorcycle in a rash and negligent manner in an inebriated condition and dashed against the halted vehicle. On a perusal of the entire evidence, it is seen that the petitioner himself in his evidence admitted that he was returning from a funeral and at the time of the accident, he was in an inebriated condition. The same was also reflected in the Accident Register Copy, which was also marked as Ex.B1. The very admission of P.W.1 before the Tribunal that he was riding his Motorcycle in an inebriated condition in the morning hours, clearly probablise the case of the first respondent that the accident was not occurred, due to the rash and negligent driving of the driver of the vehicle of the first respondent. When the rider of the Motorcycle drove his bike in an inebriated mode, this Court is of the view that he was also equally responsible for the accident.

11. In view of the above, this Court is of the view of that the Tribunal is not right in fixing 10% of the negligence on the part of the petitioner.



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Accordingly, this Court fixes 50% negligence on the part of the petitioner. As far as the quantum awarded by the Tribunal is concerned, this Court is of the view that the compensation awarded by the Tribunal under various heads does not warrant interference. Accordingly, the compensation of Rs.4,92,000/- awarded by the Tribunal is confirmed.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the petitioner is entitled to get a sum of Rs.2,46,000/- (Rupees Two Lakhs and Forty Six Thousand only) as compensation. The respondents are directed to deposit the said amount with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and costs within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount if any already deposited. The petitioner may approach the Tribunal for withdrawal of the said amount, by filing necessary application and if such an application is filed, the Tribunal shall pass orders for withdrawal. No Costs. Consequently, connected miscellaneous petition is closed.

24.04.2023

NCC : Yes/No
Index : Yes/No
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To

- 1.The Motor Accident Claims Tribunal / Special Subordinate Judge, Tanjore.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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