



**C.M.A(MD)No.377 of 2021**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 18.12.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN**

**C.M.A(MD)No.377 of 2021**

**and**

**Cros.Obj(MD) No.46 of 2023**

**and**

**C.M.P.(MD) No.3256 of 2021**

**C.M.A(MD)No.377 of 2021**

Tamil Nadu State Transport Corporation,  
Bye Pass Road,  
Palanganatham,  
Madurai,  
Through its The Managing Director.

... Appellant

.VS.

Ajith Kumar

... Respondent

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the order dated 04.03.2020 passed in M.C.O.P.No.1139 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Madurai.

For Appellant : Mr.K.Sudalaiyandi

For Respondent : Mr.V.Sakthivel



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**Cros.Obj(MD) No.46 of 2023**

Ajith Kumar

... Cross Objector

.VS.

Tamil Nadu State Transport Corporation,  
Bye Pass Road,  
Palanganatham,  
Madurai,  
through its The Managing Director.

... Respondent

**PRAYER:** This Cross Objection is filed under Order 41 Rule 22 of the Code of Civil Procedure, to modify the order made in M.C.O.P.No.1139 of 2015, dated 04.03.2020, passed by the Motor Accident Claims Tribunal (Special Sub Judge), Madurai, by enhancing the compensation amount of Rs.2,00,000/- in addition to the amount already awarded by the learned Tribunal towards compensation in favour of this cross objector with costs.

For Cross Objector : Mr.V.Sakthivel

For Respondent : Mr.K.Sudalaiyandi

### **COMMON JUDGMENT**

This appeal is filed challenging the liability and the quantum of



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compensation awarded to the respondents/claimants in a road traffic accident.

2. The respondent/claimant filed cross appeal in Cros.Obj(MD)No. 46 of 2023 for enhancement of the compensation.

3. It is seen from the claim petition that on 01.06.2015, the claimant travelled in a bus bearing Registration No.TN-63-N-0641 from Madurai to Madras. At about, 01.50 a.m., when the bus was entering in Kallambal Railway Bridge, the driver of the bus was driving the bus in a rash and negligent manner and dashed against the transport corporation bus bearing Registration No.TN-72-N-1423, which was coming from the opposite direction. In the said accident, the claimant suffered extensive injuries, especially, he suffered fractures in both the legs. He was aged about 16 years and was studying S.S.L.C., at the time of accident. Due to the injuries and disabilities suffered, he was not able to do any physical activities, like, involving in sports. His studies were effected. Therefore, this claim petition is filed claiming a compensation of Rs. 5,00,000/-.



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4. In the counter filed by the respondent it is averred that when the driver of the bus bearing Registration No.TN-63-N-0641 was coming near Kallambal Railway Bridge at about 01.50 a.m., a mentally challenged person had suddenly tried to cross the road from left to right. In order to avoid hitting him, the Transport Corporation bus driver turned the bus on the right side and applied sudden break. At the same time, another transport corporation bus bearing Registration No.TN-72-N-1423 had come from the opposite direction and he had also stopped the bus. However, there was a mild collision between both the vehicles. The respondent corporation bus driver was not responsible for the accident. The compensation claimed is excessive.

5. During the enquiry before the Tribunal, on the side of the claimant, P.W1 to P.W.3 were examined and Ex.P1 to Ex.P15 were marked and on the side of the Transport Corporation, R.W.1 was examined. Ex.C1 was also marked.

6. On the basis of oral and documentary evidence produced, the learned Tribunal awarded a compensation of Rs.4,31,000/-.



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7. The learned counsel for the appellant submitted that the transport corporation bus driver was not responsible for the accident. One more van was also involved in the accident. The van driver was responsible for the accident. The learned Tribunal should have apportioned the liability on the owner and insurer of the van driver as well. The compensation awarded is also high.

8. In reply to this submission, learned counsel for the respondent submitted that there is no mention in the counter about the involvement of the van in the accident in the counter. Therefore, the submission of the learned counsel for the appellant that the owner and insurer of the van should have been asked to pay the compensation, cannot be accepted.

9. Considered the rival submissions and perused the records.

10. It is seen from the records that the evidence is available to show that three vehicles had involved in the accident. They are: (i) the bus bearing Registration No.TN-63-N-0641, (ii) the bus bearing Registration No.TN-72-N-1423 and (iii) the van bearing Registration No.TN-64-C-6633. The van was coming behind the bus bearing



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Registration No.TN-72-N-1423. It is seen from the counter affidavit of the appellant that the involvement of the van in the accident has not been mentioned at all. The counter affidavit clearly shows that the accident had happened when the driver of the respondent corporation bus bearing Registration No.TN-63-N-0641 tried to avoid hitting a mentally challenged person, who was trying to cross the road from left to right suddenly. It is stated that in the said process, he took right turn and dashed against the bus bearing Registration No.TN-72-N-1423, which was coming from the opposite direction. The van was coming only from behind the bus bearing Registration No.TN-72-N-1423. Therefore, there is no role of the van driver in causing the accident. Primarily, the accident had happened because of the rash and negligent driving of the driver of the bus bearing Registration No.TN-63-N-0641. Therefore, this Court finds that there is no reason to interfere with the finding of the Tribunal with regard to the negligence fixed on the respondent corporation bus driver bearing Registration No.TN-63-N-0641. The petitioner was only a passenger of this bus and for no fault of him, he suffered injuries.

11. It is seen from the medical records produced, Ex.P2, Ex.P3,



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Ex.P4, Ex.P5, Ex.P6, Ex.P11, Ex.P14 and Ex.P15 that the claimant suffered fractures in both legs and took treatment at Government Rajaji Hospital, Madurai from 01.06.2015 to 29.08.2015. Even after treatment, it seems that the wound got infected and he took treatment at Sri Ramya Hospital, Trichy, from 11.11.2015 to 26.11.2015. He produced the records with regard to the medical expenses to the tune of Rs.1,30,000/-. His disability was assessed at 35%. For a student aged about 16 years, suffering disability of 35%, would certainly impact on his day-to-day activities, i.e., participation in sports activities, proper physical and mental growth and his functioning as a student and then as an adult. It would have certainly impacted his functional ability. Therefore, this Court is of the view that this is a fit case for adopting multiplier method instead of awarding Rs.5,000/- per each percentage. In this view of the matter, for disability suffered, the compensation is awarded by adopting multiplier method as follows:-

$$\text{Rs.}5000 \times 12 \times 18 \times 35/100 = 3,78,000/-$$

The compensation awarded under the other heads are retained.

12. In view of the discussions held above, this Court modifies the compensation awarded by the Tribunal, as under:



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| Sl. No | Name of the heads             | Awarded by the Tribunal | Awarded by this Court | Remarks  |
|--------|-------------------------------|-------------------------|-----------------------|----------|
| 1      | Disability                    | Rs.1,75,000/-           | Rs.3,78,000 -         | enhanced |
| 2      | Pain and sufferings           | Rs.40,000/-             | Rs.40,000/-           | same     |
| 3      | Extra Nourishment             | Rs.10,000/-             | Rs.10,000/-           | same     |
| 4      | Attendant Charges             | Rs.40,000/-             | Rs.40,000/-           | same     |
| 5      | Loss of income to the parents | Rs.30,000/-             | Rs.30,000/-           | same     |
| 6      | Damages to clothes            | Rs.2,000/-              | Rs.2,000/-            | same     |
| 7      | Transport charges             | Rs.4,000/-              | Rs.4,000/-            | same     |
| 8      | Medical expenses              | Rs.1,30,000/-           | Rs.1,30,000/-         | same     |
|        | Total                         | Rs.4,31,000/-           | Rs.6,34,000/-         | Enhanced |

13. In fine, the Civil Miscellaneous Appeal is dismissed and the cross objection is allowed and the award amount is enhanced from Rs.4,31,000/- to Rs.6,34,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation. The appellant / Transport Corporation is directed to deposit the above said enhanced award amount with accrued interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent is



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permitted to withdraw the said amount along with interest, after following due process of law. Registry is directed to draft the decree in this appeal only after payment of excess Court fee, if any, towards the enhanced award amount, before the Registry. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes/No  
Internet :Yes/No  
NCC :Yes/No  
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**18.12.2023**

To

The Motor Accident Claims Tribunal  
(Special Sub Judge),  
Madurai.



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**G.CHANDRASEKHARAN,J.**

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