



C.M.A(MD)No.421 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD)No.421 of 2021

and

C.M.P(MD)No.526 of 2023

1.Tamil Nadu State Transport Corporation,
Through its Managing Director,
Bye Pass Road,
Madurai – 625 010

2.Tamil Nadu State Transport Corporation,
Bye Pass Road,
Dindigul,
Through its,
The General Manager.

... Appellants/Respondents

Vs.

K.Satheesh Kumar

... Respondent/Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2019 passed in M.C.O.P.No.984 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Madurai.

For Appellants	:Mr.K.Sudalaiyandi
For Respondent	:Mr.K.Kumaravel



C.M.A(MD)No.421 of 2021

J U D G M E N T

WEB COPY

This Civil Miscellaneous Appeal is filed by the appellants/Transport Corporation challenging the award dated 31.10.2019 passed in M.C.O.P.No.984 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Madurai.

2. The learned counsel for the appellants/Transport Corporation would submit that the appellants challenge the award both on the grounds of liability on the part of the appellants to pay the compensation and the quantum of compensation.

3. It is seen from the petition averments that on 31.10.2015, the respondent was waiting for bus at Government Polytechnic, Muthurengapuram bus-stop. At about 11.15 a.m., the bus owned by appellants Corporation bearing Registration No.TN 57 N 1685 came to the bus stop. The respondent and other passengers tried to get into the bus through front and rear entrance. The respondent was trying to get into the bus from the front entrance. Without seeing that and without the signal from the conductor, driver of the bus had suddenly started the bus in a rash and negligent manner resulting in the respondent falling from the bus and he sustained the following injuries:



C.M.A(MD)No.421 of 2021

- (1) Blunt injury on lower abdomen.
- (2) Crush injuries on urinary passage of bladder.
- (3) Abrasion injury on left stomach 70 X 30 m.m.,
- (4) Abrasion injury on right foot.
- (5) Abrasion injury on lower left wrist.
- (6) Crush injuries on right testis.
- (7) Contusion injury on forehead.
- (8) Crush injuries on right testis.
- (9) Rupture over the urethra.
- (10) Contusion injury on the whole of the bladder.
- (11) Fracture on both hips (Pelvis).

4. The injured took treatment in Government Rajaji Hospital, Maudirai, Ananthagiri Hospital, Trichy and Aiyshwariya Hospital, Trichy. As a result of injuries suffered, he suffered permanent disability. He is not able to do his normal work. From the date of accident, he is experiencing pain and suffering. Therefore, he filed a claim petition seeking compensation of Rs.8,00,000/-.

5. The Transport Corporation filed counter affidavit stating that the Transport Corporation Driver was not responsible for the accident. After the passengers got down from the bus, the driver of the



C.M.A(MD)No.421 of 2021

bus, started the bus and moved it slowly. At that point of time, the respondent tried to board into the running bus. On seeing that through rear view mirror, the driver applied sudden brake. In the meanwhile, the respondent fell down and suffered injury. The accident had happened because of the negligent manner in which the respondent tried to board the running bus and therefore, the compensation claimed is not correct.

6. Considering the oral and documentary evidence produced in this case, the Tribunal awarded a sum of Rs.3,70,220/- as compensation. Now, this award is challenged by the appellants/Transport Corporation.

7. It is the submission of the learned counsel for the appellants that from the F.I.R., allegations and from the evidence produced by the appellants, it is established beyond any doubt that the respondent tried to board into a running bus and that was the cause for the accident. However, the Tribunal had wrongly given a finding that the Transport Corporation Driver was responsible for the accident. He would submit that the quantum of compensation awarded, especially, the amount awarded under the head “for future earning capacity” is too excessive.



C.M.A(MD)No.421 of 2021

8. In reply to the submission of the learned counsel for the appellants, the learned counsel for the respondent submitted that it is the duty of the Driver to ensure that the passengers board into and exit the bus safely. The very fact, as per the case of the appellants that the Transport Corporation Driver applied sudden brake shows that, that was the primary reason for the accident and not the fact that the respondent tried to board into the moving bus.

9. It is the further submission of the learned counsel for the respondent that after the accident, the respondent was taking continuous treatment from 2015 to 2017 and he could not continue his studies. He discontinued his polytechnic course and thereafter, completed the course during the academic years 2018-2021. Thus, the award of compensation awarded under various heads including the amount awarded under the head 'for future earning capacity' is just and appropriate.

10. I have considered the rival submissions and perused the records.

11. It is seen from the records produced and the submissions of the learned counsel appearing for the parties that the parties take



C.M.A(MD)No.421 of 2021

contrasting position with regard to the manner in which the accident had happened. From the F.I.R allegations, it could be seen that the respondent was trying to board into a moving bus. It is specifically stated in the F.I.R that when the bus moving, the respondent came running and shouting and tried to board into the bus through the front entrance. It is alleged that the Driver of the bus had not stopped the bus and drove it fast, resulting him in falling from the steps and sustaining injuries. From the counter, it could be gathered that the Transport Corporation Driver saw through the rear view mirror that the respondent tried to board into a moving bus and on seeing that he applied sudden brake. In the meanwhile, the respondent fell down and sustained injuries.

12. From the pleadings and evidence produced, it is evident that both the respondent and the Transport Corporation Driver were one way or other responsible for the accident. The respondent by trying to board into a moving bus had contributed to the accident. The Driver of the bus on seeing the respondent approaching the bus for getting into the bus had not cared to stop the bus for facilitating the respondent to get into the bus.



C.M.A(MD)No.421 of 2021

13. It is observed in the judgment in the case of **Branch Manager, National Insurance Co. Ltd., vs. Sumathi and Others** reported in **2014 ACJ 1454** that it is the duty of the crew to see that passengers safely alight from or board the bus before moving.

14. On considering all these aspects, this Court is of the view that the respondent had also contributed to the accident to an extent of 10% and the Driver of the Transport Corporation bus was responsible for the accident to an extent of 90%.

15. From the observations made on the basis of the evidence recorded, it is seen that because of the accident, the respondent had to discontinue his studies for nearly three years ie., 2015 to 2017. In the said circumstances, the compensation awarded under the head “for loss of future earning capacity” at Rs.1,80,000/- cannot be considered as excessive.

16. Similarly, the award of compensation under various other heads considering the nature of injuries suffered by the respondent, pain and suffering undergone by him, the continuous treatment he was made to undergo, are just and appropriate. Thus, this Court is not inclined to alter the quantum of compensation awarded.



C.M.A(MD)No.421 of 2021

17. As already held, since the respondent also contributed to the accident to an extent of 10%, this Court fixed the liability on the appellants and the respondent in the ratio of 90:10. In all other aspects, the award of the Tribunal is confirmed.

18. Accordingly, this Civil Miscellaneous Appeal is allowed in part. The appellants/Transport Corporation is directed to deposit their share of 90% of the award amount with proportionate interest and costs, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondent/claimant is permitted to withdraw the award amount by filing formal application before the Tribunal. No Costs. Consequently, connected miscellaneous petition is closed.

18.10.2023

pm

Index:Yes/No

NCC:Yes/No

To,

1.The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate Court),
Madurai.

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



WEB COPY



C.M.A(MD)No.421 of 2021

G.CHANDRASEKHARAN, J.

pm

C.M.A(MD)No.421 of 2021

18.10.2023