



C.M.A. (MD)No.1086 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

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M/s.Tamil Nadu State Transport Corporation Limited.,  
Rep by its Managing Director,  
Tirunelveli, Office at  
No.2, Trivandrum Road,  
Vannarapettai,  
Tirunelveli-627 003.

...Appellant/Respondent

Vs.

Roy Nishantha Dias

...Respondent/Petitioner

**PRAYER:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to call for the records relating to the order and decretal order dated 28.03.2022 passed in M.C.O.P.No.810 of 2017 by the Motor Accident Claims Tribunal /Special Sub Court, Tirunelveli and to set aside the same.

For Appellant : Mr. S.Sinduja

For Respondent : Mr.T.Thirumurugan



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## **JUDGMENT**

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Challenging the award passed by the Motor Accident Claims Tribunal awarding compensation of Rs.92,500/- as 50% compensation to the claimant, the present Civil Miscellaneous Appeal has been filed.

2.The brief facts, leading to the filing of the claim petition, are as follows:-

(i)For the sake of convenience, the parties herein are referred to as per their rank before the Trial Court.

(ii)On 27.08.2017 at about hours, when the petitioner was travelling as pillion rider in the motorcycle bearing Reg.No.TN 72-AR-7213 driven by one Kaleeswaran from Palayamkottai Samathanapuram towards KTC Nagar from west to east by keeping left side of the road, a bus bearing Registration No.TN-72-N-1185 belonging to the respondent driven in a rash and negligent manner without observing the traffic rules dashed against the motorcycle. As a result, the petitioner sustained injuries on the right leg and multiple injuries all over his body. The rider of the motorcycle sustained fracture injuries on his right leg. A case was also registered against the rider of the two wheeler.



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(iii) the respondent before the tribunal took a stand that the bus was proceeding on the east of Samathanapuram near Iyyanar Timber depot. At that time, the two wheeler rider drove the motorcycle in a rash and negligent manner and dashed against the front right side bumper body of the bus belonging to the respondent and invited the accident.

3.Before the tribunal, on the side of the claimants P.W.1 was examined and Ex.P1 to Ex.P6 were marked. On the side of the respondent R.W.1 was examined and Ex.R1 was marked and the disability certificate was also marked as Ex.C1.

4.The tribunal after analyzing the oral and documentary evidence has fixed the negligence on both sides and awarded the compensation as follows:

| S.No. | Head                | Amount        |
|-------|---------------------|---------------|
| 1.    | Disability          | Rs.90,000/-   |
| 2.    | Attendant Charges   | Rs. 10,000/-  |
| 3.    | Pain and suffering  | Rs. 20,000/-  |
| 4.    | Extra nourishment   | Rs. 20,000/-  |
| 5.    | Loss of convenience | Rs. 25,000/-  |
| 6.    | Transport charges   | Rs. 10,000/-  |
| 7.    | Loss of Income      | Rs. 10,000/-  |
|       | Total               | Rs.1,85,000/- |



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The total compensation amount is Rs.1,85,000/-. The tribunal has deducted 50% towards contributory negligence on the part of the rider of the motorcycle. Hence, the Tribunal has awarded a sum of Rs.92,500/- to the claimant. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Transport Corporation.

5.The learned counsel for the appellant transport corporation submitted that the tribunal without any reason has fixed the negligence on the part of the driver of the bus and the entire liability has to be fastened on the Insurance Company of the two wheeler. Hence, he prayed for allowing of this appeal.

6.I have heard the learned counsel appearing on either side and also perused the materials available on record.

7.In view of the above submissions, now the point arises for consideration in this appeal is:

***Whether the tribunal was right in fixing 50% negligence on the part of the driver of the appellant corporation?***



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8. On perusal of the evidence of P.W.1, injured, it is made clear that he was a pillion rider and the bus was coming in an opposite direction in a rash and negligent manner and dashed against the two wheeler. FIR has also been registered against the driver of the bus for driving the bus in a rash and negligent manner. Considering all these aspects, the tribunal has fixed the negligence on the part of the rider of the two wheeler and also on the driver of the bus.

9. The appellant corporation driver, who is driving the vehicles in a public road, ought to be more careful. Merely because of the two wheeler was allegedly coming in an opposite direction in a rash and negligent manner, the driver of the appellant corporation ought to have been very careful while driving the bus in the same direction. It is not the case of the appellant that despite the best efforts taken by the driver of the bus, the bus could not be halted and hit the two wheeler. Whereas the evidence on record clearly shows that the bus was proceeded in an opposite direction. If the driver of the bus applied break and stopped the bus in a right direction he could have averted the accident. Hence, the tribunal has rightly fixed 50% liability on both sides and the same cannot be found fault. Therefore, this Court is of the view that merely an FIR has been registered



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against the rider of the two wheeler same will not absolve the driver of the bus was from his negligent act.

10. With regard to the compensation aspect, the Tribunal has taken note of 18% disability suffered by the petitioner and awarded a sum of Rs.90,000/- at Rs.5,000/- per percentage and awarded a total compensation of Rs.1,85,000/- under various heads. In this compensation, the appellant fastened with the liability for a sum of Rs.92,500/- with the interest at the rate of 7.5% from the date of petition till the date of realization.

11. For the forgoing reasons and considering the nature of the injuries sustained by the appellant, this Court is of the view that there is no infirmity in the award passed by the Tribunal and the same does not warrant any interference. Accordingly, this Civil Miscellaneous Appeal is dismissed.

12. The appellant is directed to deposit the entire compensation amount as awarded by the Tribunal with accrued interest and costs to the credit of M.C.O.P.No.810 of 2018, on the file of the Motor Accident Claims Tribunal / Special Sub Court, Tirunelveli within a period of one month from the date of



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receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw the award amount, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs.

**14.03.2023**

NCC : Yes / No  
Index : Yes/No  
Internet : Yes/No  
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To

- 1.The Motor Accident Claims Tribunal  
Special Sub Court, Tirunelveli.
- 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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