



**C.M.A(MD)No.1057 of 2022**

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

**DATED: 08.12.2023**

**CORAM:**

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

**C.M.A(MD)No.1057 of 2022**

**and**

**C.M.P.(MD) No.10566 of 2022**

The Managing Director,  
Tamil Nadu State Transport Corporation  
(Kumbakonam Division)  
Periyamilaguparai,  
Trichy-1.

... Appellant

.VS.

K.Rajini

... Respondent

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the award made in M.C.O.P.No.114 of 2020, dated 20.04.2022, on the file of the Motor Accident Claims Tribunal/Special Sub Court, Trichirappalli.

For Appellant : Mr.P.Prabhakaran

For Respondent : Mrs.R.Yamuna



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## **JUDGMENT**

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This appeal is filed challenging the award passed in M.C.O.P.No. 114 of 2020 on the ground of liability to pay the compensation.

2. The respondent filed the claim petition in M.C.O.P.No.114 of 2020 seeking compensation of Rs.10,00,000/- for the injuries and disability suffered in a road accident. It is claimed that on 15.01.2019, at about 3.40 p.m., the petitioner was riding his TVS Motorcycle bearing Registration No.TN-48-AJ-2298 from east to west near Kulithalai ACT Nagar Junction, opposite to Balaji Show Room. At that time, the appellant Corporation bus bearing Registration No.TN-45-N-3542 had come from the opposite direction in a rash and negligent manner and dashed against the petitioner. As a result, he suffered Comminuted Supra Intercondylar fracture in right leg femur and fracture dislocation in right hand, metacarpal bones, swelling and tenderness over right thigh and right knee and right hand fingers. Due to the injuries, he suffered disability. He was working as an accountant and doing collection work in UKS Vegetables Shop, Gandhi Market, Trichy and earning a sum of Rs.15,000/- per month. Due to the disability suffered, he is not able to



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work as he was used to work. Thus, this petition has been filed.

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3. The appellant filed counter stating that the appellant Corporation bus driver was not responsible for the accident. When the bus was proceeding from west to east near Kulithalai ACT Nager Junction on left side of the road, the petitioner came from opposite direction in a rash and negligent manner and in the wrong side of the road laden with carrot bag on the motorcycle. On seeing the two wheeler, the appellant Corporation bus driver sounded horn, switched on the head lights of the bus on and off and alerted the motorcyclist. He stopped the bus on the extreme left side of the road and despite that, the motorcyclist lost balance and dashed against the front right side of the bus. The two wheeler rider was mainly responsible for the accident. The compensation claimed is excessive.

4. During the enquiry before the Tribunal, on the side of the claimant, P.W1 and P.W.2 were examined and Ex.P.1 to Ex.P.8 were marked. On the side of the appellant Corporation, R.W1 was examined and no document was marked. Ex.C.1 was also marked.



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5. On the basis of oral and documentary evidence, the learned Tribunal found that the accident had happened due to the rash and negligent driving of the Transport Corporation bus driver and awarded a compensation of Rs.9,29,320/-.

6. Challenging this award, the appellant filed the present civil miscellaneous appeal on the ground that when there is evidence available that the injured had ridden the two wheeler with load on the top of the petrol tank and that it could have been the probable and possible reason for his losing the control and dashing against the bus. The learned Tribunal had not considered this aspect and fastened the entire liability for the accident on the Transport Corporation bus driver. This is against the evidence. That apart, the injured has suffered only 40% of disability. For this disability, instead of awarding compensation as per percentage basis, the learned Tribunal had wrongly adopted multiplier method and awarded a sum of Rs.6,45,000/- towards disability on the basis of multiplier method, which is excessive.

7. In response, the learned counsel for the respondent submitted that the injured had taken only a small bag, which would no way cause



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imbalance. From the oral and documentary evidence produced, the learned Tribunal rightly found that the Transport Corporation bus driver was alone responsible for the accident. The injured had also suffered functional disability because of 40% disability suffered by him. He is not able to work as used to work earlier. Therefore, he prayed for confirming the award passed by the learned Special Sub Judge, Trichirappalli and dismissal of this appeal.

8. Considered the rival submissions and perused the records.

9. From the submissions made above, the points which arose for considerations are:

*(i) Whether the respondent/injured had contributed to the accident?*

*(ii) Whether the compensation awarded is excessive?*

10. The copy of the first information report is marked as Ex.A1. A reading of FIR shows that it is specifically stated by the defacto complainant in the FIR that her husband had ridden the two wheeler bearing Registration No.TN-48-AJ-2298 with the carrot sack in



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front side of the motorcycle, i.e., possibly on the top of the petrol tank.

This fact is not disputed by the respondent. Certainly keeping the carrot sack in front side of the motorcycle, i.e., on the top of the petrol tank, would cause imbalance for the motorcycle rider to ride the motorcycle, in a proper manner. The case of the appellant is that the Transport Corporation bus driver was driving the bus from west to east direction keeping the left side of the road. The respondent/injured, who had come on the wrong side of the road, lost the control of the vehicle and dashed against the bus. From the established fact that the respondent had ridden the two wheeler with carrot sack on the front side of the motorcycle, it is no doubt that the respondent had also contributed to the accident. This aspect was totally neglected or not considered by the Tribunal. Therefore, this Court is of the view that the respondent had contributed atleast 25% for the accident.

11. With regard to the quantum of the compensation awarded, this Court finds from medical records, i.e., Ex.P3, that the respondent suffered the following injuries:-

*Comminuted Supra intercondylar fracture  
Femur-Right*



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*Fracture dislocation 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> CMC joint-Right*

*Diabetes Mellitus.*

12. He was admitted as inpatient in Geethanjali Medical Centre on 15.01.2019 and treated till 26.01.2019. On 16.01.2019, surgery was performed on him adopting the following surgical method:-

**1.Bicondylar plating Right femur with bone grafting.**

*Under Spinal Anaesthesia, aseptic Precaution, Parts scrubbed. Painted and drapes. Through lateral approach, Vastus elevated. Fracture reduced and eight hole distal femur LCP kept, fixed with Cortical and Cancellous screws. Since there is extensive Comminution in the Medical aspect of the Right Femur, it is planned to fix the Medial Column.*

*Through separate Medial incision, Vastus Medialis elevated, Fracture fixed with five hole Medial femoral locking plate. Bone graft harvested from the Right Iliac Crest and kept in the fracture site. Drain kept and wound closed in layers. Distal pulse present.*

**2. CRIF with 'K'-wires-Right hand.**

*Under 'C'-arm guidance, fracture dislocation of 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> CMC joint Right hand reduced and fixed with Multiple 'K'-wires. Below elbow slab applied.*



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13. He also produced Ex.P4, Prescription and Ex.P5 and Ex.P6-Medical bills in support of the treatment undergone by him.

Considering the nature of the injuries, surgical treatment, there is no doubt that the claimant is suffering from disability. This disability would have certainly resulted in functional disability. Thus, this Court finds the submissions of the learned counsel for the respondent that due to the disability suffered, the respondent is not able to perform his work/function as he was used to perform is correct. Therefore, the quantum of compensation awarded by the Tribunal, in the considered view of this Court, was right and appropriate. However, in view of fixing liability/responsibility at 25% on the respondent for causing the accident, 25% of the compensation has to be deducted and the remaining amount to be paid to the respondent. After deducting 25% of the compensation amount, the award amount is arrived at Rs.6,96,990/- (Rs.9,29,320 – Rs.2,32,330 = Rs.6,96,990/-).

14. In fine, the Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal is reduced from Rs.9,29,320/- to Rs.6,96,990/- with interest at 7.5% p.a from the date of claim petition till the date of realisation. The appellant Transport Corporation is



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directed to deposit the compensation amount awarded by this Court i.e., Rs.6,96,990/- with accrued interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent herein is at liberty to withdraw the same, after following the due process of law. If the appellant had already deposited the compensation awarded by the Tribunal, then, they are at liberty to withdraw the balance amount, which is in excess of the amount awarded by this Court, after following the due process of law. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes/No  
Internet :Yes/No  
NCC :Yes/No  
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**08.12.2023**

To

The Motor Accident Claims Tribunal/  
Special Subordinate Judge,  
Trichirappalli.



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**G.CHANDRASEKHARAN,J.**

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