



S.A.(MD) No.95 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

**S.A.(MD) No.95 of 2021
and
C.M.P.(MD) No.1503 of 2021**

- 1.The State of Tamil Nadu,
represented by its District Collector's Office,
Tiruchirappalli -1.
- 2.The District Medical Officer/
Dean, KAP Government Medical College and
Annal Gandhi Memorial Government Hospital,
Tiruchirappalli -17.
- 3.The Medical Officer,
Government Hospital, Lalgudi,
Trichy District.
- 4.Joint Director (Health Services),
Tiruchirappalli-1.

..Appellants

Vs.

Bharathi Mohan

...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 26.06.2018 passed in A.S.No.31 of 2017 on the file of the learned Principal District Judge, Tiruchirappalli confirming the judgment and decree dated 21.04.2016 passed by the learned I Additional Subordinate Judge, Tiruchirappalli in O.S.No.107 of 2010.



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For Appellants

: Mr.N.Muthu Vijayan

Special Government Pleader

For Respondent

: Mr.G.Sridharan

JUDGMENT

This second appeal is filed challenging the concurrent judgments of both the Courts below in A.S.No.31 of 2017 on the file of the learned Principal District Judge, Tiruchirappalli in O.S.No.107 of 2010 on the file of the learned I Additional Subordinate Judge, Tiruchirappalli.

2.The respondent/plaintiff filed a suit in O.S.No.107 of 2010 claiming damages of Rs.4,00,000/- with interest. The case of the respondent is that on 26.05.2008 at about 10.30 pm., he was having tea in a tea shop abutting the north-south wall of Government hospital, Lalgudi, Siruthaiyur road. Suddenly, the wall fell on the plaintiff and two others. As a result, they got injuries. The plaintiff suffered fracture on his left thigh and lost 3 toes on his left leg. He suffered extensive injuries on his right leg. He was admitted in the Government hospital, Trichy and got treatment from 27.05.2008 to 12.06.2008. He had again taken treatment at G.V.Hospital, Trichy from 13.06.2008 to 17.08.2008. He spent a sum of Rs.1,00,000/- towards medical expenses. Despite treatment, he is still suffering due to the injuries. The respondent/plaintiff was working as Supervisor in MRE Construction, Lalgudi and earning Rs.4,500/- per month. Due to the accident, he was not able to work for some time. FIR in Crime No.443 of 2008 was registered



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in respect of this accident. For the disabilities suffered, for the loss of earning, medical expenses, the respondent claimed Rs.4,00,000/- as compensation.

3.The case of the respondent/plaintiff is resisted by the appellants/defendants stating that the manner of the accident alleged in the plaint is not correct. Similarly, the injuries suffered, the treatment taken ought to be proved only by the respondent. His employment and the monthly earning stated in the plaint are not correct. The compound wall had collapsed due to heavy rain. Immediately after the incident, the plaintiff was given proper medical treatment and he was alright after the treatment. Therefore, the plaintiff is not entitled for any compensation.

4.During the course of trial, P.W1 and P.W2 were examined and Ex.A1 to Ex.A21 were marked. D.W1 was examined and no document was marked on the side of the defendants.

5.On considering the oral and documentary evidences, the learned trial Judge found that the plaintiff is entitled for a sum of Rs.4,00,000/- towards damages with interest. In the appeal, the judgment of the trial Court was confirmed and the appeal in A.S.No.31 of 2017 was dismissed. Therefore, the appellants/defendants filed this second appeal.



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6. When the matter was taken up for hearing on 18.02.2021, this second appeal was admitted on the following substantial question of law:

“Whether the Courts below were right in holding that Public Works Department is not necessary party to the suit, more particularly, when the construction and maintenance of compound wall are within the control of Public Works Department?”

7. It is the submission of the learned counsel for the appellants that when it was raining, by standing near the old wall, the respondent had contributed to the accident. The nature of injuries alleged to have been suffered by him, the medical expenses stated to have been incurred by him are all not correct. Without considering these aspects properly, the Courts below decreed the suit.

8. In response, the learned counsel for the respondent submitted that the respondent suffered 60% partial permanent disability and thus, the award of damages to the tune of Rs.4,00,000/- is just and appropriate.

9. Considered the rival submissions and perused the records.

10. It is not in dispute that the respondent suffered injuries due to the collapse of compound wall of the Government hospital at Lalgudi. Even in the



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written statement, it is admitted that the compound wall had collapsed due to heavy rain. The compound wall or for that matter any wall should be constructed to withstand the natural calamities like, heavy rain, wind etc., The fact that the compound wall fell during heavy rain, *prima facie* shows that the construction was a poor construction and not upto the required standard. Therefore, the appellants cannot escape from their liability by stating that the wall collapsed due to heavy rain.

11.It is seen from the oral and documentary evidence produced, especially Ex.A7, the discharge summary, Ex.A8 to Ex.A18, medical receipts, Ex.A19, X-ray, Ex.A20, disability certificate, Ex.A21, disability book issued by the Government to the respondent, with regard to his disability, that the respondent suffered 60% of permanent disability.

12.The respondent is working as labour in building construction. It was found that due to the injury and consequent disability, he would not be in a position to work as he was used to work. Taking into consideration the pain and sufferings undergone by him due to the injuries suffered in the accident, disability, the learned trial Judge awarded a sum of Rs.3,00,000/- as damages. The respondent produced medical bills to the tune of Rs.33,325.85/- and that was admitted as such. Apart from that, taking into consideration the payment made for



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assistant charges, extra nourishment, etc., the comprehensive award of Rs. 1,00,000/- was awarded for medical expenses, attendant charges, extra nourishment etc. The award of Rs.4,00,000/- as damages for the injuries caused to the respondent due to the fall of compound wall collapse at any stretch of imagination cannot be considered as illegal or excessive. The finding of facts recorded by the trial Court was confirmed by the first appellate Court.

13. With regard to the substantial question of law framed in this second appeal, this Court finds that the Public Works Department comes under the control of District Collector. Therefore, the District Collector is added as first defendant. Therefore, impleading of Public Works Department is not necessary. Thus, the observation of the Courts below that the Public Works Department is not a necessary party is correct. Accordingly, the substantial question of law is answered.

14. Both the Courts below have concurrently found that the appellants are liable to pay compensation as damages to the respondent at Rs.4,00,000/- with interest. This Court finds that this finding does not call for any interference from this Court. No other substantial question of law arises for the consideration in this second appeal.



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15.At this juncture, the learned counsel for the appellants subitted that the interest was awarded from the date of notice at 7.5% and at 9% if the damages is not paid within two months from the date of decree. The interest awarded is excessive. This Court is of the view that the respondent is entitled for interest only from the date of filing of the suit. Therefore, the interest awarded from the date of notice ie., on 01.02.2009 is set aside and modified to the effect that the respondent/plaintiff is entitled for interest from the date of filing of the suit ie., on 28.04.2009. With regard to the subsequent interest, the trial Court awarded interest at 9%. Grant of 9% interest is excessive. Therefore, this Court modifies the interest as follows:-

“The plaintiff is entitled for interest at 7.5% from the date of filing of the suit till the date of decree and at 6% from the date of decree till the realization of award amount.”

16.This Second Appeal is dismissed with the aforesaid modification. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

20.10.2023

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To

- 1.The Principal District Judge,
Tiruchirappalli.
- 2.The I Additional Subordinate Judge,
Tiruchirappalli.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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