



C.M.A.(MD).No.1062 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD).No.1062 of 2023 and
CMP(MD) No.14571 of 2023

The Managing Director
Tamilnadu State Transport Corporation
Periyamilaguparai
Trichy

... Appellant

Vs.

S.Hemalatha

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act 1988 against the award and decree dated 04.06.2022 in MCOP No.1499 of 2012 on the file of the Motor Accident Claims Tribunal/the learned III Additional Sub Judge, Tiruchirappalli.

For Appellant : Mr.K.Ramaiah

For Respondents : Mr.K.P.Narayanakumar

J U D G M E N T

This civil miscellaneous appeal is filed challenging the award dated 04.06.2022 in MCOP No.1499 of 2012 passed by the Motor Accident Claims Tribunal, III Additional Sub Judge, Trichy.



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2.The respondent filed claim petition stating that on 05.06.2012, at about 12.30 hrs., she was travelling in a TVS-50 Champ motorcycle bearing registration No.TN45 E5543, as a pillion rider along with her husband and her son. Her husband was riding the two wheeler. When they were travelling in the two wheeler in the Tennur high road at Thillai nagar, southern arch near the police umbrella, a bus came from the same direction in a rash and negligent manner. The bus driver in his attempt to overtake the motorcycle hit the motorcycle. As a result, the respondent/claimant fell down and left front tyre of the bus ran over her left foot. In the said accident, her husband and son were also injured. She was running a tailor shop in the name and style of Hema tailoring and earning a sum of Rs.10,000/- per month. After the accident, she was not able to do the tailoring work and she suffered permanent disability due to the injury suffered in the accident. She claimed a compensation of Rs.10 lakhs.

2.1. The claim petition was contested by the respondent. In the counter, it is stated that the bus bearing registration No.TN 45 N 2353 was proceeding from Senthaniapuram to Chatham Bus stand via Thillai



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Nagar. 3/4th of the bus had entered the Thillai nagar southern arch to proceed towards north. At that time, the two wheeler, which came from west in a rash and negligent manner hit against the rear left side of the bus and fell down. The bus driver was not responsible for the accident.

3. Before the Tribunal, P.W.1 and P.W.2 were examined. Ex.P1 to Ex.P.8 were marked. R.W.1 was examined and Ex.C1 was marked. On considering the oral and documentary evidence produced, the learned Tribunal awarded a sum of Rs.9,77,814/- as compensation.

4. This appeal is filed by the appellant/corporation stating that three persons were travelling in a two wheeler and that the rider was responsible for the accident. These factors have not been considered by the Tribunal and liability was fastened entirely on the appellant corporation. That apart, the compensation awarded was excessive.

5. In response to the submission, the learned counsel for the respondent/claimant submitted that the accident was caused mainly because of the rash and negligent driving of the bus driver, without



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minding the two wheeler coming by its northern side. The injured was a tailor by profession and earning Rs.10,000/- per month. However, the Tribunal had taken only Rs.6,000/- as monthly income and awarded compensation, which is just and fair compensation and thus, he prays for dismissal of this appeal.

6. I have considered the rival submissions made on either side and perused the material available on record.

7. From the submission of the learned counsel for the parties and the records produced, it is seen that the first information report was registered against the bus driver. From the manner in which the accident happened, it is evident that when the two wheeler was going from west to east, the bus was also coming in the same direction. In an attempt to overtake the two wheeler and take a left turn towards north, the bus driver, had not taken care of the two wheeler coming by its side on the north and hit the two wheeler. That is the reason why, the impact was on the left side of the bus. Hence, this Court is of the view that the accident had happened mainly because of the rash and negligent driving of the bus



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driver. Therefore, there is no need for any interference with regard to this finding of the tribunal.

8. With regard to the submission of the learned counsel for the appellant that three persons were travelling in the two wheeler, which contributed to the accident, the learned counsel for the respondent stated that apart from the claimant, and her husband, the third person travelling in the two wheeler was her five year old son. Therefore, there is no possibility that the accident had happened because of the third person travelled in the two wheeler.

9. This Court finds merits in the submission for the reason that three persons travelled were the father, mother and a small child. A small child travelling in a two wheeler cannot contribute to the accident. Moreover, as held earlier, the accident had happened while the bus was trying to overtake the two wheeler. Therefore, the submission of the learned counsel for the appellant is rejected.

10. Coming to the quantum of compensation, the Tribunal,



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considering the nature of the injuries and the disability suffered, the nature of the job and monthly income earned by the injured, assessed the loss of income at Rs.6,45,120/-. Total compensation was awarded at Rs. 9,77,814/- including compensation for medical expenses, pain and sufferings and on other heads. As per the medical records, the claimant suffered injury on her left ankle. It appears that skin grafting was done. She had taken treatment at Rathna Global Medical Hospital. The opinion given by the Government Hospital and discharge summary given by the Rathna Global Medical Hospital were produced as Ex.P2 and Ex.P3. Medical bills to the tune of Rs.1,98,116/- were produced as Ex.P6. The disability certificate was produced as Ex.P7. Disability assessed by the medical board was produced as Ex.C1.

11. The respondent claims that she was earning Rs.10,000/- per month in her tailoring business and the tribunal had taken only Rs.6,000/- as monthly income. Considering her avocation and age, 40% of Rs.6,000/- was added towards future prospects monthly income was fixed at Rs.8,400/- (6000+2400). Adopting multiplier method, the tribunal arrived at a sum of Rs.6,45,120/- (8400 x 16 x 12 x 40%) towards partial



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permanent disability and loss of earning capacity. Certainly the disability suffered by her would affect her functions as a tailor. Therefore, this Court is of the view that the sum of Rs.6,45,120/- awarded towards partial permanent disability and loss of earning capacity cannot be considered as excessive.

12. This Court has no issue with regard to grant of Rs. 1,87,694/- towards medical expenses based on the bills produced. However, the tribunal has awarded Rs.60,000/- towards pain and sufferings and then Rs.30,000/- towards loss of amenities. When a sum of Rs.6,45,120/- was awarded towards permanent disability and loss of earning capacity, again granting a sum of Rs.60,000/- towards pain and sufferings and Rs.30,000/- towards loss of amenities are not appropriate but excessive. Thus, a sum of Rs.60,000/- awarded for pain and sufferings is reduced to Rs.25,000/- and a sum of Rs.30,000/- on the head of loss of amenities is set aside.

13. Similarly, when there is no evidence for future medical treatment, the award of Rs.20,000/- is not appropriate and therefore,



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award of Rs.20,000/- for future medical treatment is set aside. The compensation awarded on the other heads such as Rs.10,000/- for extra nourishment, Rs.10,000/- towards attendant charges, Rs.10,000/- towards transport expenses and Rs.5,000/- towards damages to the clothes of the injured are retained. Thus, the compensation awarded is modified as follows:

Heads	Awarded by the tribunal (Rs.)	Modified/reduced	Final Compensation (Rs.)
Loss of income	6,45,120	(confirmed)	6,45,120
Medical expenses	1,87,694	(confirmed)	1,87,694
Loss of amenities	30,000	Set aside	--
Loss of pain and sufferings	60,000	(reduced)	25,000
For extra nourishment	10,000	(confirmed)	10,000
For attendant charges	10,000	(confirmed)	10,000
For future medical expenses	20,000	Set aside	--
For transport expenses	10,000	(confirmed)	10,000
For damages to clothes	5,000	(confirmed)	5,000
Total	9,77,814		8,92,814



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14. In the result, the civil miscellaneous appeal is allowed in part and the compensation awarded by the Tribunal is hereby reduced to Rs.8,92,814/- from Rs.9,77,814/-. The appellant corporation is directed to deposit the entire award amount of Rs.8,92,814/- (Rupees eight lakhs ninety two thousand eight hundred and fourteen only), if not already deposited, within a period of four weeks from the date of receipt of the judgment with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of MCOP No.1499/2012 on the file of the Motor Accident Claims Tribunal/III Additional Sub Judge, Trichy. On such deposit being made, the respondent/claimant is permitted to withdraw the award amount with interest and costs, less the amount already withdrawn, if any, on due application before the Tribunal. No costs. Consequently connected Miscellaneous Petition is closed.

30.10.2023

NCC : Yes/No
Internet : Yes/No

RR



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WEB COPY To

- 1.The Motor Accident Claims Tribunal,
III Additional Sub Judge, Tiruchirappalli

- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

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