



C.M.A(MD)No.754 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.754 of 2015

and

M.P(MD)No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division-2) Limited,
Thiruvananthapuram Road,
Vannarapettai, Tirunelveli.

... Appellant/1st Respondent

Vs.

1.Chinnakannu

... Respondent/Petitioner

2.Sekar

3.Reliance Insurance Company Limited,
Chennai Branch.

... Respondents/Respondents 2&3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed in M.C.O.P.No.117 of 2007, dated 21st day of October 2008 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Thoothukudi.



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For Appellant : Mr.M.Prakash
For R1 : Mr.M.Gnanagurunathan
For R2&R3 : No Appearance

JUDGMENT

The present appeal has been filed by the transport corporation challenging the award passed by the Motor Accident Claims Tribunal, Thoothukudi in M.C.O.P.No.117 of 2007 primarily on the ground of negligence and quantum.

2. The claimant was a passenger in the 1st respondent transport corporation bus on 23.04.2007, which had dashed against a parked lorry owned by the 2nd respondent and insured with the 3rd respondent. The claimant has contended that the accident has taken place only due to the rash and negligent driving on the part of the driver of the bus.

3. However, the transport corporation has filed a counter contending that the accident has taken place only due to the manner of parking of the lorry by the driver of the 2nd respondent.



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4. The tribunal after considering the oral and documentary evidence has arrived at a categorical finding that the accident has taken place solely due to the negligence on the part of the driver of the transport corporation. Thereafter, proceeded to fix the compensation at Rs.2,62,000/-. Challenging the said award, the present appeal has been filed by the transport corporation.

5. According to the learned counsel appearing for the appellant, the tribunal was not right in fixing the negligence on the part of the driver of the transport corporation. In fact, the accident has taken place only due to the negligence on the part of the driver of the lorry. He further contended that the quantum of award awarded to the claimant is unreasonable and it is excessive. Hence, he prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the claimant pointed out that another passenger who had sustained injuries in the same accident had filed M.C.O.P.No.119 of 2007 and a common award was passed by the tribunal. However, the transport corporation has not chosen to file any appeal as against the said award. Therefore, the issue of negligence cannot be raised again in the present appeal by the transport corporation. He further contended that considering the nature of



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injuries and the disability suffered by the claimant, the award is reasonable and therefore, the same cannot be disturbed.

7. I have carefully considered the submissions made on either side and perused the material records.

8. The claimant by name, Chinnakannu and another claimant by name Sundaravel, both have travelled as passengers in the bus belonging to the 1st respondent transport corporation. The bus had dashed against a parked lorry at 06.00 a.m on 23.04.2007. In the said accident, both the claimants have sustained grievous injuries. The claimant Chinnakannu had filed M.C.O.P.No.117 of 2007 and Sundaravel had filed M.C.O.P.No.119 of 2007. Both the claim petitions were heard together and a common award was passed by the tribunal on 21.10.2008. As against the award passed in M.C.O.P.No.117 of 2007, the present appeal has been filed. According to the learned counsel appearing for the appellant transport corporation, though they have filed another appeal as against the award in M.C.O.P.No.119 of 2007, the same is pending in the SR stage from the year 2009 onwards. Therefore, it is clear that the transport corporation has not chosen to number the appeal for the past 14 years.



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9. When the appeal as against M.C.O.P.No.119 of 2007 has not been numbered for the past 14 years, this Court finds that the issue relating to negligence cannot be raised again in the present appeal arising out of M.C.O.P.No.117 of 2007.

10. As far as the quantum is concerned, the tribunal had relied upon the disability certificate which discloses that the claimant has suffered 65% disability. Based upon the said disability certificate, a sum of Rs.1,30,000/- has been awarded. The tribunal has further awarded a sum of Rs.5,000/- towards extra nourishment, a sum of Rs.25,000/- towards pain and suffering, a sum of Rs.77,000/- towards medical expenses and transport charges. The tribunal has further awarded a sum of Rs.15,000/- towards amenities. This Court does not find the said award amount is either unreasonable or excessive. The tribunal has awarded a sum of Rs.10,000/- towards loss of happiness in life which is not legally sustainable. However, this Court finds that the claimant had sustained grievous injuries and plates and screws have been implanted as per medical reports and it is also submitted that she requires a second surgery. Therefore, considering the said fact, a sum of Rs.10,000/- could be awarded under the head of attender charges. The tribunal has awarded a sum of Rs.20,000/- towards future medical expenses which stands confirmed.



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11. In view of the above said deliberations, the total award amount of the tribunal, namely a sum of Rs.2,62,000/- stands confirmed and the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

28.06.2023

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

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To

- 1.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court,
Thoothukudi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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