



C.M.A.(MD)No.286 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 0202.2023

Delivered On : 17..2023

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.M.A.(MD)No.286 of 2017

Tamil Nadu State Transport Corporation Ltd.,

Kumbakonam,

rep. by its Managing Director,

... Appellant / 3<sup>rd</sup> respondent

Vs.

1.Muralidharan

... 1<sup>st</sup> Respondent / Petitioner

2.Sirajudeen

3.Cholamandalam M.S.General

Insurance Co. Ltd.,

Rep. by its Branch Manager,

Thanjavur.

... Respondents 2 & 3/Respondents 1 & 2

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.131 of 2011, dated 12.02.2013, on the file of the Motor Accidents Claims Tribunal – Principal Sub Court, Kumbakonam.



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For Appellant : Mr. D.Sivaraman  
For Respondents : No appearance

### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.131 of 2011, dated 12.02.2013, on the file of the Motor Accidents Claims Tribunal – Principal Sub Court, Kumbakonam. The appellant herein is the third respondent, the first respondent herein is the claimant and the respondents 2 & 3 herein are the respondents 1 & 2 in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.131 of 2011, is as follows:-

On 06.09.2010, when the second petitioner - Muralidharan and his son Hariharan travelled in the Cabin of a TATA Ace vehicle bearing Registration No.TN-68-B-2092, a bus bearing Registration No.TN-49-N-1550, came in a rash and negligent manner and dashed against the mini Van. The second petitioner and the deceased sustained injuries. The petitioner sustained grievous injuries, he was admitted in K.S.Hospital and then, he was admitted in Anbu Hospital, Kumbakonam and he took treatment as inpatient from 06.09.2010 till 16.09.2010. He sustained multiple fractures



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in the left leg and chin. On 07.09.2010, he has undergone surgeries, plates and screws were fixed, again on 08.09.2010, he has undergone facial surgery, again, he was admitted on 30.11.2010 and he has undergone surgeries, to remove the screws, then he took treatment as out patient and he is undergoing physiotherapy. He is in need of another surgery. He was working as a sales officer in the Butterfly Home Appliance Company. He was earning Rs.9,000/- as salary, Rs.5,000/- towards travelling expenses and Rs.3,000/- by way of incentive. The petitioner suffers loss of income and he claim a sum of Rs.5,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No. 131 of 2011, is as follows:-

The manner of accident is denied. The Insurance policy for the TATA Ace vehicle and the driving licence of the driver of the vehicle are all denied. The deceased and the second petitioner travelled only as gratuitous passengers and not as the owner of the goods. The petitioner has mentioned that the TATA Ace vehicle was driven in a careful and cautious manner, keeping the left side of the road, the driver of the TATA Ace vehicle was not responsible for the accident. The accident has happened only due to the rash and negligent driving of the third respondent.



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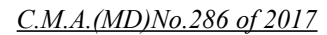
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4. A brief substance of the counter filed by the third respondent, in 131 of 2011, is as follows:-

The accident was not due to the rash or negligent driving of the bus driver. Even in the F.I.R, it was mentioned that the bus came in a slow speed, but, it was the TATA Ace vehicle, which came in a rash and negligent manner. There is contradiction between the wordings in the F.I.R and the wordings in the M.V.I. report. The accident has happened only due to the rash and negligent driving of the TATA Ace vehicle. The respondent is not liable to pay compensation.

5. The petitioner and another person filed a claim petition M.C.O.P. No.130 of 2011, for the death of the deceased and the petitioner filed a petition in M.C.O.P.No.131 of 2011 for his injury. Both the cases are taken up for joint trial and a common judgment was pronounced by the Tribunal.

6. In the joint trial, 3 witnesses were examined and 16 documents were marked on the side of the petitioners. 4 witnesses were examined and 2 documents were marked on the side of the respondents. After considering





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TATA ace vehicle. F.I.R was registered against the driver of the TATA Ace vehicle and the liability was fixed against the insurance Company of the TATA Ace vehicle. The Tribunal is wrong in fixing 50% responsibility on the transport corporation.

9. P.W.1 and P.W.2 have deposed that it was the transport corporation bus that came in a rash and negligent manner and that the F.I.R was registered on the complaint given by the bus driver. R.W.4 has deposed that the accident has happened due to the rash and negligent driving of the TATA Ace vehicle. Considering the evidence of P.W.1, P.W.2 and R.W.4 and considering Ex.P1 - F.I.R, Ex.P2 and Ex.P3 - M.V.I. Reports and considering Ex.R1- letter from R.T.O office, the Tribunal has fixed the liability on the insurance company of the TATA Ace vehicle and on the transport corporation. Considering the fact that the accident is a head on collision, it is decided that the liability fixed by the Tribunal is reasonable.

10. On the side of the appellant, it is stated that the quantum fixed by the Tribunal is excessive. P.W.3 has deposed that the petitioner sustained 32.7% of partial permanent disability. Wound certificate was marked as Ex.P15. The Tribunal has awarded Rs.2,000/- for each percentage of



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disability, which is reasonable. The Tribunal awarded Rs.10,000/- towards pain and sufferings, Rs.2,000/- towards extra nourishment, Rs.1,000/- towards transport expenses, Rs.15,000/- towards temporary loss of income, which are all reasonable.

11. On the side of the appellant, it is stated that the compensation awarded towards medical expenses is without any basis. Considering the discharge summary -Ex.P9 and P10 and considering the medical bills – Ex.P11, P14, the Tribunal has awarded Rs.17,170/- and Rs.13,530/- and totally Rs.30,700/- towards medical expenses, which is reasonable. The Tribunal has awarded a sum of Rs.1,24,100/- as compensation and 50% of the compensation (Rs.62,050/-) to be paid by the Insurance Company and 50% (Rs.62,050/-) of the compensation to be paid by the Transport Corporation, which is reasonable.

12. For the above said reasons, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this appeal is dismissed. The compensation awarded by the Tribunal is hereby confirmed.



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(i) The appellant herein - Transport Corporation, is directed to deposit a sum of Rs.62,050/- (if not already deposited) together with interest at the rate of 7.5% per annum with proportionate cost and the third respondent herein – Insurance Company is directed to deposit a sum of Rs.62,050/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with proportionate costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made, the claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing proper petition before the Tribunal, less any amount, if already withdrawn by them. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

**17.03.2023**

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

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To

1.The Motor Accidents Claims Tribunal –  
Principal Sub Court,  
Kumbakonam.

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



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**R. THARANI, J.**

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Pre-delivery Judgment made in  
C.M.A.(MD)No.286 of 2017

**17.03.2023**