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C.M.A.(MD)No.625 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 13.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.625 of 2023

C.Kavitha

...Appellant/Petitioner

Vs.

1.Alaguraja (Driver)

2.The Managing Director,
Tamilnadu State Express Transport Corporation Ltd.,
Nearby South RTO Office,
Mattuthavani,
Madurai.

3.Maridurai

4.Sureshkumar

5.The Divisional Manager,
M/s.Oriental Insurance Company Ltd.,
16, K.R.Complex,
North Veli Street,
Madurai.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to call for the records relating to the award dated 06.06.2022 passed in M.C.O.P.No.321 of 2016 by the Special Sub Judge (Motor Accidents Claims Tribunal), Madurai and to set aside the same.



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For Appellant : Mr.R.Raja Mohan
For R1 & R3 : Ex-parte before Tribunal
For R2 : Mr.P.Prabhakaran
For R4 : Exonerated by the Tribunal
For R5 : Mr.A.Ilango

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the award dated 06.06.2022 passed in M.C.O.P.No.321 of 2016 by the Special Sub Judge/Motor Accident Claims Tribunal, Madurai.

2. The petitioner/claimant in M.C.O.P.No.321 of 2016 is the appellant herein.

3. The petitioner/injured filed the claim petition.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 321 of 2016 is adopted hereunder.

5. The brief facts of the case:

On 09.06.2013 the petitioner was travelling in the second respondent's bus bearing registration No.TN 01 N 5799 from Vilathikulam to Chennai. The bus was driven by its driver/1st respondent in a rash and negligent manner near Pamur Colony diversion road at



Trichy - Chennai National Highway at 1.30 hours and suddenly went over the centre median near U.Turn and dashed against the Omni bus bearing registration number TN 69 AY 5095 owned by the 4th respondent and driven by the 3rd respondent. Due to the impact, the petitioner and other 50 passengers sustained injuries in both buses and one Rajapushpam died. The petitioner sustained multiple grievous injuries i.e., 1) fracture below the right knee, 2) crack in the bone in the left shoulder, 3) vision lost in the left eye and 4) multiple grievous injuries on the left hand and all over the body. She was taken to Government Hospital, Trichy and after first aid she was shifted to Madurai Meenakshi Mission Hospital and took treatment from 10.06.2013 to 21.06.2013. F.I.R. was registered against the first respondent, who is the driver of the second respondent's bus. The vehicle of the 4th respondent was insured with the 5th respondent. Hence, the petitioner filed the claim petition seeking compensation of Rs.20,00,000/-.

6. The second respondent objected the claim petition by contending that unfortunately the tyre of the second respondent's bus burst and the driver of the bus lost control, the bus was dragged towards right and dashed with 4th respondent's bus TN 69 AY 5095, which was



proceeding in opposite direction with high speed. The accident was not taken place on the part of the driver of the bus and there was no negligence upon the first respondent. The accident took place due to act of God.

7. The 5th respondent filed a counter and objected that the accident happened due to rash and negligent driving of the first respondent, who is the driver of the second respondent. The third respondent was driving the bus TN 69 AY 5095 at moderate speed observing traffic rules. The second respondent's bus dashed against the 4th respondent's bus. The entire negligence over the driver of the second respondent TNSTC.

8. The Tribunal has tried the M.C.O.P.No.321 of 2016 and both side adduced oral and documentary evidence. On the side of the petitioner, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.19 were marked. On the side of the second respondent, R.W.1 was examined and no document was marked. Ex.C.1 was marked.

9. After hearing both and after considering the evidences, the Tribunal has passed the impugned order and awarded a total compensation of Rs.2,31,500/- with interest.



10. Aggrieved by the said award, the petitioner has preferred this Civil Miscellaneous Appeal.

11. Heard both side and perusal the records in this Civil Miscellaneous Appeal.

12. The learned counsel for the petitioner has submitted that the petitioner lost her eye vision, she was suffered from permanent disability and lost her earning capacity. The Tribunal failed to adopt the multiplier method. P.W.2 and P.W.3 clearly deposed about the loss of eye vision by the petitioner. Moreover, Ex.C1 - Disability Certificate was marked. She was bedridden and lost her earning ability. Moreover, the petitioner's husband filed the divorce petition, which lead her in confusion of matrimonial life. The petitioner is entitled for compensation under the head of loss of earning as held in **(2001) 8 SCC 197, (2010) 9 SCC 218 and 2020 SCC Online SC 52**. The Tribunal ought to have held loss of income as Rs.11,000/- p.m. as held by the Division Bench of Madras High Court held in **2019 (1) TN MAC 54 (DB)** and applied multiplier method. The Tribunal has awarded meager compensation under the heads of pain and suffering, loss of convenience, extra nourishment, attendant charges and transportation. In support of his contention, the learned



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counsel for the petitioner relied on the following decisions:

(i) 2022 (2) TN MAC 923 (United India Insurance /v/ Saravanan)

(ii) 2019 (1) TN MAC 54 (DB) (Andal /v/ Avinav Kannan and New India Insurance Company)

13. The learned counsel for the second respondent has contended that as the tyre of the bus burst the accident took place, which is beyond control of the driver. The accident is an act of God. The petitioner was sleeping at the time of accident. The driver of the Omni bus was not examined, which is fatal to the case. So, all the respondents are liable for the negligence. As per the claim petition and evidence of the petitioner, she lost eye sight in her right eye she has not lost her entire vision, and she stated that she could not see anything properly. But she stated that she lost her eye vision in left eye. Though the petitioner took treatment at Arvind Eye Hospital, Tirunelveli no document was filed to show the same. Ex.C.1 is issued by the Medical Board of Madurai, wherein it is not stated that the petitioner's disability is permanent disability. This was held by the Tribunal. In support of his contention, the learned counsel for the second respondent relied on citation reported in **2011 (1) TN**



**MAC 208 (Branch Manager, National Insurance Company /v/
A.P.Maha Bharathi and others).**

14. The learned counsel for the 5th respondent argued that the accident did not take place because of tyre burst. The driver of the second respondent slept while driving, which is evidenced by P.W.1's cross. Even if the tyre bursts, the Tribunal correctly held that because of improper and bad maintenance of the second respondent company, the tyre burst and the second respondent's bus driver is held negligent and the second respondent is liable to pay compensation. F.I.R. was registered against the driver of the second respondent alone. Negligence need not be proved beyond reasonable doubt as a criminal case. The preponderance of probability is sufficient. In this case, the accident was taken place due to the negligent driving of the second respondent's driver. So, the Omni bus driver is not held responsible for accident and thereby, the 5th respondent is not liable to pay any compensation. In support his argument, the learned counsel for the 5th respondent placed reliance on the following citations:

**(i) 2011 ACJ 1613 (Parmeshwari /v/
Amir Chand others)**



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(ii) 2009 (1) TN MAC 700 (SC) (Bimla Devi and others /v/ Himachal Road Transport corporation and Ors.)

(iii) 2014 (1) TN MAC 135 (Pongiammal & Ors. /v/ R.Chinnarasu & Ors.)

15. In reply, the learned counsel for the petitioner submitted that there is no question of liability arising in this appeal, because the second respondent has not preferred any appeal against the order of Tribunal and also has not filed any cross-appeal in this case. The Medical Officer's evidence is sufficient, who stated that the petitioner lost her left eye vision, which was caused in the accident and the permanent disability assessed is 20%.

16. The main contention of the petitioner/claimant is that the Tribunal has failed to adopt the multiplier method and also the Tribunal awarded meager compensation under other heads. Admittedly, the petitioner has lost eye vision in her left eye. Though the respondents contended that the petitioner has deposed in her evidence that she could not see properly anything, P.W.2 - Medical Officer of Aravind Hospital clearly deposed that the petitioner sustained injury due to accident, the



pressure in the left eye was on higher side and so surgery was done anyhow vision not restored. The Tribunal has not considered the evidence of P.W.2.

17. On perusal of records, the petitioner appeared before the medical board of Madurai Rajaji Government Hospital and the board issued disability certificate as the petitioner sustained 20% of disability in her left eye. This was not disputed by the respondents. But, the Tribunal has awarded compensation of Rs.3,000/- per percentage of disability. In **2022 (2) TN MAC 822**, the learned Judge of this Court adopted multiplier formula for loss of eye vision following the judgment of this Court in **M.Ahmed Abdulla vs. Vairamuthu and another in C.M.A. No.1707 of 2015 dated 18.02.2020.**

18. On perusal of records, in the case on hand, the petitioner lost her left eye vision, as seen from the evidence of P.W.2 - Doctor. P.W.2 clearly deposed that the petitioner lost her left eye vision due to accidental injuries. The Medical Board issued disability certificate under Ex.P.19 stating that the petitioner's disability is 20%. In view of the decision of the learned Judge of this Court in **2022 (2) TNMAC 822**, this is fit case for adopting the multiplier method. The Tribunal has not



considered these aspects in its award and simply awarded Rs.3,000/- per percentage of disability.

19. The petitioner states that she has no income and his husband filed a divorce petition because of her health condition. This was not disputed by the respondents. In **Sarla Varma's case** notional income was fixed at Rs.6,000/-. The Division Bench of this Court has also held in **2019 (1) TN MAC 54** that the notional income of the deceased has to be fixed after applying the inflation index based on notional income of Rs.6,500/- p.m. fixed by the Hon'ble Supreme Court in Sarla Varma's case in the year 2008. In this case, the accident took place in the year 2013 and the age of the petitioner is 32 as stated by her in the claim petition. There is no dispute in it. The Tribunal fixed age as 30 based on Ex.P.13 - Aadhaar Card of the petitioner. However, based on admission by the petitioner the age is to be taken as 32. As per **Sarla Varma's case**, the multiplier is fixed at 16. In view of the decision of the Division Bench of this Court in **2019(1) TNMAC 54**, the notional income of the petitioner is fixed at Rs.11,000/- p.m. Hence, this Court fixes the compensation at Rs.4,22,400/- (Rs.11,000 x 12 x 16 x 20%) under the head loss of earnings.



20. In respect of other heads, admittedly the petitioner sustained multiple injuries and lost her vision in her left eye and took treatment at two private hospitals. The Tribunal awarded Rs.1,43,500/- towards medical expenses as per medical bills produced and there is no objection by both sides. But, the Tribunal awarded amounts towards pain and suffering, extra nourishment, transportation, attendant charges are meager and the same have to be increased in view of the decision taken by this Court in **2022 (2) TN MAC 822**, as there is no contra contention raised by the respondents.

21. Thus, this Court holds that the total compensation payable to the appellant/petitioner/claimant in M.C.O.P.No.321 of 2016 as follows:

Sl. No.	Description	Amount awarded by this Court
1.	Loss of earnings (Rs.11,000/- x 12 x 16 x 20%)	Rs.4,22,400/-
2.	Pain and Suffering	Rs. 50,000/-
3.	Extra nourishment	Rs. 20,000/-
4.	Medical expenses	Rs.1,43,500/-
5.	Attendant charges	Rs. 20,000/-
6.	Loss of convenience	Rs. 20,000/-
7.	Transportation	Rs. 10,000
	Total	Rs. 6,85,900/-



Therefore, the petitioner/claimant is entitled to Rs.6,85,900/- and to that extent the award of the Tribunal has to be modified.

22. Now, liability is concerned, the second respondent has argued that the accident was taken place as the tyre of the bus unfortunately burst and the accident was taken place beyond control and it is an act of God and so, all the respondents are liable to pay compensation. Moreover, the second respondent submitted that the petitioner deposed as she was sleeping at the time of accident. Admittedly, F.I.R. was lodged against the driver of the second respondent's bus driver and it is not expected from the claimant who might have known all details as to how accident took place. The petitioner also deposed in her cross examination that the co-passenger told that the bus driver slept at the time of accident and so, it ran across the median and dashed against the Omni bus, which was coming from opposite direction. The Tribunal rightly held that due to bad maintenance of bus, the tyre burst and so, the Tribunal fixed negligence on the first and second respondents. Further, as rightly argued by the learned counsel for the 5th respondent, the second respondent has not adduced substantial evidence for contributory negligence. Moreover, the second respondent has not preferred any appeal against the impugned order of the Tribunal, much less it has not



filed cross-appeal as submitted by the petitioner side. The citations relied on by the second respondent is not applicable to the facts of the case and the citations relied on by the petitioner and 5th respondent are applicable to the facts of this case. From the evidences adduced on both side, the Tribunal has rightly held negligence on the part of the first respondent, who is the driver of the second respondent and hence, the second respondent is liable to pay the compensation.

23. Therefore, the appeal is to be allowed and the compensation awarded by the Tribunal is modified and fixed as Rs.6,85,900/-. In other respect, the award is confirmed.

24. In the result,

- (i) The Civil Miscellaneous Appeal is partly allowed. No costs.
- (ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,13,500/- to Rs.6,85,900/- with interest as ordered in the impugned order.
- (iii) The appellant/claimant is entitled to receive a sum of Rs.6,85,900/- with interest and cost.
- (iv) The second respondent/Transport Corporation is directed to deposit the entire compensation amount of Rs.6,85,900/- (Rupees Six



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Lakhs Eighty Five Thousand and Nine Hundred only), less the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.321 of 2016 on the file of the Special Subordinate Judge/Motor Accident Claims Tribunal, Madurai within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent/Transport Corporation, the claimant/appellant herein is permitted to withdraw the entire amount with interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any.

13.03.2024

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

To

- 1.The Special Sub Judge (Motor Accidents Claims Tribunal),
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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