



C.M.A(MD)No.153 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.153 of 2022

Minor.Deshika,
Represented through her father,
Natural Guardian,
Manikandan.

... Appellant

Vs.

1.The General Manager,
Tamil Nadu State Transport Corporation,
Perundurai Road, Erode.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Bye Pass Road,
District Collectorate Campus,
Dindigul – 624 004.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree made in M.C.O.P.No.155 of 2017 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge), Dindigul, dated 06.03.2018, in so far seeking the enhancement of quantum of compensation alone.

For Appellant	: Mr.A.Saravanan
For R1	: Mr.P.Prabhakaran
For R2	: Mr.K.Sudalaiyandi



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JUDGMENT

The claimant has preferred this Civil Miscellaneous Appeal.

2.The minor suffered injury due to the accident. This appeal is filed by the claimant for enhancement of compensation. The respondents had objected for enhancement of compensation and submitted that the Tribunal has fixed excess compensation and hence further enhancement is unnecessary.

3. The Learned Counsel appearing for the respondents further submitted that the parents of the minor are also responsible for the accident. It is seen the nature of the accident is that the minor was sitting on the lap of the father. While travelling the minor playfully had kept the hand outside the window and the offending vehicle was coming behind and was trying to overtake the bus, due to speed the bus wobbled, space between the buses was less, both the buses rubbed each other and hit each other. In the process, the right hand of the child was severed. The Tribunal has fixed the entire negligence on the part of the Bus Driver.

4. For enhancement the Learned Counsel appearing for the appellant relied



on the judgment rendered in the case of **Managing Director Vs. K.V.Azeekuman alias Azee and another** reported in **2011 (2) TN MAC 875** wherein it is held that the contributory negligence cannot be fixed on the part of the passenger since there should be space between two buses which was not maintained by the bus Driver as well as the offending vehicle. The relevant portion of the judgment is extracted hereunder:

“9. The evidence in the present case indicated that the bus grazed the speeding lorry all of a sudden and the bus driver swerved the vehicle and in the said process, the right arm of the claimant, who was seated on the rear seat next to the window, got severed and the severed part of the hand fell on the road. RW.1 the bus driver has stated that the claimant, who was having his hand folded, suddenly projected his hand outside the window, which resulted in severing of his hand. But, according to the claimant, he was resting his elbow on the sill of the window and suddenly when the bus swerved, his arm got severed. It could be straight away said that there is no evidence to show that any precaution to the effect that passengers should not keep their hands outside the window was administered to the passengers at the time of the accident or prior to the accident. Even otherwise, it is the duty of the driver to leave a sufficient space, while overtaking or crossing any vehicle keeping in view that it is not uncommon that the passengers sometimes keep their hands on the sill of the window. So it cannot be said that the claimant has attributed to the negligence, which ultimately resulted in the accident. It is the responsibility of the driver alone to drive the vehicle safely taking all precautionary



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measures to carry the passengers to the destination safely. He has to avoid excessive speed, follow traffic rules, have a good look out and anticipate certain contingencies, like, cattle straying on the road, public crossing the road suddenly, if it is a residential locality, etc. The driver had to take reasonable precautions like an ordinary prudent man to ensure the safety of the passengers. He cannot shirk his responsibility and escape award of damages.”

In the said judgment, it is stated that since there is no evidence to show that precaution was not given to the passengers, hence contributory negligence cannot be fixed on the passengers. But it is an admitted fact that in all the Transport Corporation buses the following verse will be written:

“ கரம் சிரம் புறம் நீட்டாதீர் ”

Therefore, this fact was not taken by the Learned Single Judge in the above said case. Therefore, the judgment relied on by the learned Counsel appearing for the appellant cannot be relied on.

5. It is a precaution given to adults and therefore, the father of the minor ought to have acted cautiously. Even though contributory negligence cannot be fixed on the minor but the act of the father is enough to fix contributory negligence on the father. Therefore, this Court is inclined to fix the contributory



negligence of 20% on the father.

6. As far as the compensation granted by the Tribunal is concerned, the compensation is granted on irrelevant heads. The claimant sought enhancement on various other heads which are on higher side.

7. Therefore, this Court is fixing the modifying the compensation as under:

i.	Monthly income of the injured	Rs.8,000/-
ii.	Loss of future income (25%)	Rs.2,000/-
Total		Rs.10,000/-

Sl.No.	Head of Compensation	Modified award granted by this Court
1.	Loss of earning power, notional income (Rs.10,000/-*12*15)	Rs.18,00,000/-
2.	Pain and Suffering	Rs.1,00,000/-
3.	Loss of marital prospects	Rs.1,00,000/-
4.	Future treatment	Rs.1,00,000/-
5.	Medical Bill	Rs.63,000/-
Total		Rs.21,63,000/-
Deducting 20% contributory negligence of father		- Rs. 4,32,600/-
Total compensation granted by this Court		Rs.17,30,400/-



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Therefore, the award granted by the Tribunal (Rs.9,88,000/-) is enhanced to **Rs. 17,30,400/-** by this Court.

8. This Court is fixing the liability on both the buses. But the learned Counsel appearing for the 2nd respondent objected for the same. Since both the Bus Drivers have not maintained appropriate space between the buses, both the buses are liable to pay. Hence, the argument of the learned Counsel appearing for the 2nd respondent cannot be accepted.

9. The respondents 1 and 2 are directed to deposit **Rs.17,30,400/-** totally (ie., Rs.8,65,200/- by each respondent) with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the father / guardian of the claimant is permitted to withdraw the medical bill amount of Rs.63,000/- with proportionate accrued interests and costs, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal. The Tribunal is directed to deposit the balance share of the minor child (Rs.16,67,400/- with proportionate accrued interest) in a nationalized bank until the child attains



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majority. The father/guardian of the minor child, is permitted to withdraw the interest amount once in three months. Once the minor claimant attains majority, the claimant shall withdraw the amount with accrued interest.

10. With the above said observation, the Civil Miscellaneous Appeal is disposed of. No costs.

20.02.2024

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

Tmg

To

1. Motor Accident Claims Tribunal,
(Special Sub Judge), Dindigul,
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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