



**C.M.A.(MD).No.548 of 2014**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 14.02.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.DHANABAL**

**C.M.A.(MD)No.548 of 2014**

1. The District Collector,  
Sivagangai District.

2. The Director of Rural Development,  
Panagal Buildings,  
Saidapet,  
Chennai.

... Appellants/Respondents

-VS-

Petchimuthu

... Respondent/Petitioner

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the fair and executes order dated 06.07.2013 made in M.C.O.P.No.43 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sivagangai.

For Appellants : Mr.Veera Kathiravan – AAG-III  
Assisted by  
Mr.Mathu Vijayan  
Special Government Pleader  
For Respondent : Mr.G.Prabhu Rajadurai



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## **J U D G M E N T**

This Civil Miscellaneous Appeal has been filed by the appellants as against the order passed in M.C.O.P.No.43 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sivagangai, wherein the respondent herein filed the petition for compensation due to the road accident.

2. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 10.01.2006, at about 07.30 a.m, while the petitioner was standing at Madagupatti Bus Stop, at that time, the driver of the first respondent drove the vehicle in a rash and negligent manner and dashed against her. Hence, she sustained grievous injuries all over the body. She was treated as inpatient from 19.01.2006 to 17.04.2006 at Government Rajaji Hospital, Madurai. The accident occurred due to the rash and negligent driving of the first respondent Car. The petitioner incurred a sum of Rs.88,500/- (Rupees Eighty Eight Thousand and Five Hundred only) towards medical treatment. Thereby, she claimed a compensation of Rs.3,00,000/- (Rupees Three Lakhs only).



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3. The brief averments in the counter filed by the respondents are as follows:

The accident was not caused due to the rash and negligent driving of the car. The manner of accident, the averments that the petitioner sustained injuries due to the accident and the case was registered against the first respondent driver and she was admitted in the hospital, are denied. The accident took place only due to the negligence on the part of the petitioner and not on the part of the driver of the first respondent. The negligence was not on the part of the TATA SUMO Car, but the accident occurred due to the negligence on the part of the petitioner. The petitioner is put to strict to proof of the income and the injuries sustained by her. Hence, this petition is liable to be dismissed.

4. Before the Tribunal, in order to prove the case of the petitioner, she has examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.8. On the side of the respondents, the driver of the first respondent vehicle was examined as R.W.1 and Exhibit R.1 was marked. After elaborate discussions, the Tribunal has partly allowed the petition and passed an award of Rs.2,11,750/- (Rupees Two Lakhs Eleven Thousand Seven Hundred and Fifty only) with interest at



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the rate of 7.5% p.a. and directed the respondents to deposit the amount from the date of the petition till the date of realization.

5. Aggrieved over the above said order of the Tribunal, the present appeal has been filed by the respondents on various grounds including question of liability and the quantum.

6. The learned counsel appearing for the appellant would contend that the appellant/respondent vehicle was not at all involved in the accident and thereby, they are not liable to pay any compensation. According to the petitioner, the petitioner was standing in the bus stop. In the Accident Register, it was mentioned that while she was alighting in the bus, the Tata Sumo Car hit against her. Further, the FIR has been registered as against the driver of the first respondent and filed charge sheet and after elaborate discussion the Judicial Magistrate Court has acquitted the accused. Therefore, the vehicle did not involve in the accident and thereby, the appellants/respondents are in no way liable to pay compensation to the petitioner. Further, to prove the case of respondents they examined the driver of the vehicle as R.W.1 and he also deposed that his vehicle has not involved in the



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accident and he is no way liable for the accident. But the Tribunal without considering the evidences of the appellants/respondents, erroneously fixed liability as against the appellants/respondents and awarded compensation. Therefore, the award passed by the Tribunal compensation is liable to be set aside.

7. The learned counsel appearing for the respondent would contend that the accident took place due to the negligence on the part of the driver of the first respondent and thereafter, the respondent/petitioner had taken treatment in the hospital. The petitioner also examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.8. The Tribunal after taking into consideration the evidences adduced by the both sides, correctly fixed the liability and thereby, the present appeal is liable to be dismissed.

8. This Court heard both sides and perused the materials on record.

9. In this case, according to the appellants/respondents, their vehicle was not at all involved in the accident and thereby, they are not liable to pay any compensation. In this context, they examined R.W1 who also deposed



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that the vehicle had not involved in the accident and he only taken the petitioner to the hospital and thereby, the respondents side proved the case.

10. Per contra, according to the respondent/petitioner, the accident took place due to the negligence on the part of the driver of the appellants/respondents. On the date of accident when she was standing near bus stop, the respondents vehicle came in a rash and negligent manner and dashed against her and she sustained grievous injuries. In order to prove the case of the petitioner she examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.8. Since the appellants/respondents denied involvement of the accident, the petitioner has to prove that the particular vehicle only involved in the accident. The evidence of P.W.1 and Ex.P.1- F.I.R reveals that the vehicle of the appellants/respondents involved in the accident. After registering FIR, the police officials also investigated the matter and filed charge sheet, but the Judicial Magistrate acquitted the accused after examining the witnesses. It is well settled law that, only because of acquittal order passed by the Magistrate, it cannot be presumed that the accident had not happened due to the negligence on the part of the driver of the first respondent and the independent witness examined by the Tribunal has to be taken into account to fix the negligence.



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In this case, P.W.1 has deposed about the involvement of the vehicle and rash and negligence on the part of the driver of the first respondent. Further, the appellants/respondents filed counter and not denied the involvement of the vehicle and only denied the negligence on the part of the driver of the respondent. It is well settled law that without pleadings the evidence cannot be adduced.

11. Therefore, the Tribunal after took into consideration of all the aspects, correctly came to a conclusion that the accident took place due to the rash and negligent driving on the part of the driver of the appellants/respondents. Therefore, the order passed by the Tribunal in respect of fixing the liability, on the driver of the first respondent is correct and there is no infirmity or perversity in the order passed by the Tribunal.

12. In so far as the claim is concerned, the Tribunal awarded a sum of Rs.2,11,750/- (Rupees Two Lakhs Eleven Thousand Seven Hundred and Fifty only) towards compensation. The respondent/petitioner sustained grievous injuries and her permanent disability is 48%. But the Tribunal has not taken into account the percentage of the disability and awarded, a sum of



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Rs.30,000/- towards treatment and medicines, a sum of Rs.750/- towards Transport expenses, a sum of Rs.10,000/- towards extra Nourishment, a sum of Rs.36,000/- towards loss of earnings, a sum of Rs.60,000/- towards pain and sufferings and a sum of Rs.75,000/- for permanent disability and total award amount of Rs.2,11,750/- (Rupees Two Lakhs Eleven Thousand Seven Hundred and Fifty only) towards compensation.

13. Considering the above said facts, the award passed by the Tribunal is without any basis. Therefore taking into consideration the date of accident and the percentage of the disability, this Court is inclined to award a sum of Rs.2,000/- for 1% disability and thereby, awarded a sum of Rs.96,000/- for permanent disability of 48%.

14. The Tribunal has awarded a sum of Rs.30,000/- (Rupees Thirty Thousand only) towards treatment and medicines, but the petitioner has not produced any records. Since she had taken treatment under the Government Hospital there could not be medical expenses. The Tribunal without any medical bills awarded the compensation for the treatment of the petitioner, a sum of Rs.30,000/- and the same is not correct.



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15. The Tribunal awarded a sum of Rs.750/ towards transportation charges, and it is a meager amount, this Court considering the nature of injuries and treatment given to the petitioner inclined to award a sum of Rs.10,000/- towards compensation.

16. Considering the nature of injuries and the treatment, the Tribunal has awarded a sum of Rs.10,000/- towards extra nourishment and the same is in order.

17. The Tribunal after taken into consideration the treatment, awarded a sum of Rs.36,000/- towards loss of earning and the same is also correct.

18. The Tribunal awarded a sum of Rs.60,000/- towards pain and sufferings. Considering the nature of injuries, this Court is inclined to accept the award passed by the Tribunal under the head of pain and sufferings.

19. In view of the above said discussion, the respondent/petitioner is entitled to the amount as follows:



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|                      |                         |
|----------------------|-------------------------|
| Permanent Disability | - Rs. 96,000/-          |
| Transport Expenses   | - Rs. 10,000/-          |
| Extra nourishment    | - Rs. 10,000/-          |
| Loss of Income       | - Rs.36,000/-           |
| Pain and sufferings  | - Rs. 60,000/-          |
|                      | -----                   |
| Total                | - <b>Rs. 2,12,000/-</b> |

20. Therefore, this Court is inclined to change the head of the amount awarded by the Tribunal without altering the total quantum of the amount. Therefore, the petitioner is entitled to award amount as stated above.

21. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no orders as to costs.

**14.02.2024**

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

1. The Motor Accidents Claims Tribunal (Subordinate Judge),  
Sivagangai.
2. The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.DHANABAL,J.**

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