



C.M.A.(MD).No.754 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.754 of 2023
and C.M.P.(MD).No.10630 of 2023

The Commissioner of Police,
Commissioner Office,
Alagar Kovil Road,
Madurai City, Madurai.

... Appellant/2nd Respondent

Vs.

1.P.Guruvammal

... 1st Respondent/Petitioner/Claimant

2.M.Soundarapandian

... 2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Award dated 20.01.2022 passed in M.C.O.P.No.324 of 2017, on the file of the learned IV Additional Sub Court/Motor Accident Claims Tribunal at Madurai.

For Appellant : Mr.D.S.Nedunchezian

For Respondents : Mr.S.M.Mohan Gandhi for R1
R2 – No Appearance



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JUDGMENT

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This appeal has been filed to set aside the Award dated 20.01.2022 passed in M.C.O.P.No.324 of 2017, on the file of the learned IV Additional Sub Court/Motor Accident Claims Tribunal at Madurai.

2.The facts in brief:

On 10.01.2016 at about 7.30 p.m., the petitioner was walking from west to east direction in front of Avaniyapuram Bus stand. At that time, the Omni bus bearing registration No.TN 59 G 0700 was driven by the first respondent in rash and negligent manner and hit the petitioner behind. As a result of which, he sustained grievous injuries. A case in Crime No.6 of 2016, was registered against the first respondent vehicle driver. The petitioner was admitted in Velammal Medical College Hospital and take treatment as in patient from 10.01.2016 to 11.01.2016 and later shifted to the Government Rajaji Medical College Hospital, Madurai, underwent surgery and took treatment till 30.01.2016.

3.He suffered fracture on the right clavical portion, knee, left ankle. Apart from wrist injury, contusions abrasions. Because of the



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accidental injuries, he is not in position to continue his profession as professional dancer; she was earning about Rs.12,000/- per month.

Because of the accidental injuries, she claims compensation amount of Rs.4,00,000/-.

4.It was resisted by the second respondent, who is the appellant herein by filing counter stating that the accident took place because of the rash and negligent act of the petitioner himself. The case registered against the first respondent was closed. Similarly, the first respondent the driver of the vehicle filed a counter stating that without minding the traffic on the road, the petitioner crossed the road and invited the accident. Apart from that other customary denials were made.

5.The Tribunal recorded a finding in respect of the issue of negligence, that the occurrence took place because of the rash and negligent driving on the part of the first respondent.

6.Regarding the compensation amount, that the claimant is a professional dancer and because of the accidental injury, she was unable



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to carry on her profession as before assessed the monthly income of the claimant at Rs.1,20,000/- in total during the treatment period. Finding that 15% partial permanent disability the Tribunal fixed Rs.5,000/- per percent. For 15% it awarded compensation amount of Rs.75,000/- in total. To that customary amount was added which are in the order which extracted herein.

1.Compensation for injuries	- Rs. 75,000/-
2.For Pain and sufferings	- Rs. 50,000/-
3.Loss of amenities	- Rs. 50,000/-
4.Loss of income during the period of treatment	- Rs.1,20,000/-
5.Medical Expenditure	- Rs. 13,125/-
6.For Transport Expenses	- Rs. 3,000/-
7.For Extra Nourishment	- Rs. 10,000/-
8.Attender Charges	- <u>Rs. 14,000/-</u>
Total	- <u>Rs.3,35,125/-</u>

7.Against which, this appeal is preferred by the Commissioner of Police, Madurai. The learned counsel for the appellant would submit that the criminal case ended in favour of the second respondent herein namely, the driver of the vehicle. Apart from that it is also submitted that accident was invited by the claimant herself by crossing the road without



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minding the traffic. So contributory negligence ought to have been fixed upon the claimant. The learned counsel would further submit that the liability was wrongly fixed upon the second respondent's vehicle's driver. Regarding the compensation amount, no argument was advanced.

8.Regarding the negligence, the accident was explored by the appellant as mentioned above with reference to the negligence. The first respondent was examined as RW1 and naturally, he is an interested witness. On the side of the claimant, the eye witness was examined as PW2 and has stated in his evidence that he was acquitted in the criminal case registered against him. But, the Tribunal recorded finding that the finding of the Criminal Court will not bind the Tribunal. In the absence of any direct evidence that the petitioner suddenly crossed the road and invited the accident, Judgment of acquittal has no relevancy.

9.As mentioned above, there is no independent witness to the above said occurrence. The petitioner is also interested witness. During the course of cross examination, it was suggested to her that she suddenly crossed the road. So in the absence of any evidence to show



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that claimant suddenly crossed the road, the contention raised by the appellant is not tenable.

10.The claimant is a pedestrian. The first respondent was driving the four wheeler so he ought to have been careful keeping watch on the pedestrian. Had it been so the accident would not have been taken place. So the manner of the accident itself indicates the rashness on the part of the appellant driver namely the second respondent herein. This was the finding of fact recorded by the Tribunal. On that aspect, it requires no interference.

11.Regarding the compensation amount, as mentioned above, the claimant was referred to Medical Board attached to the Government Medical College Hospital, Madurai. He underwent plastic surgery. So disability was fixed at 5%. In respect the operating injuries it was fixed as 10%. Total disability was fixed as 15%. So considering the nature of the injuries suffered by the claimant, the fact that he underwent surgery for the fracture plastic surgery, it was assessed at 15% as partial permanent disability and awarded Rs.75,000/- is reasonable. Other heads



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namely pain and sufferings, loss of amenities and loss of income during the treatment period were reasonably fixed, which requires no interference. The attendant charges has been calculated on the basis of the number of days of in patient. So those amounts were reasonably fixed Medical Bills are also supported by documentary evidence.

12.Considering the overall assessment of compensation, I find no case is made out by the appellant to interfere into the award passed by the Tribunal. So appeal fails.

13.Accordingly, this civil miscellaneous appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.07.2024

Index : Yes / No
Internet : Yes / No
TM

To

1.The IV Additional Sub Judge, Motor Accident Claims Tribunal at Madurai.

2.The Section Officer,

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E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN,J.

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