



C.M.A.(MD).No.39 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 04.12.2023

PRONOUNCED ON : 03.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.39 of 2017

Malaichamy

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Byepass Road,
Madurai.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.389 of 2009 on the file of the Motor Accident Claims Tribunal/IV Additional Sub Judge, Madurai dated 07.02.2013.

For Appellant : Mr.A.Hajamohideen
For Respondent : Mr.P.Prabhakaran

JUDGMENT

This Civil Miscellaneous Appeal is filed as against the judgment and decree of the Motor Accident Claims Tribunal at Madurai in



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M.C.O.P.No.389 of 2009 dated 07.02.2013 by the
appellant/petitioner/claimant seeking enhancement of compensation.

2. Aggrieved by the insufficiency of the compensation awarded by the Tribunal, by its award dated 07.02.2013, the injured claimant has preferred this Civil Miscellaneous Appeal.

3. The brief facts leading to filing of the Civil Miscellaneous Appeal is as follows:-

On 16.11.2007 at about 21.45 hours, while the petitioner/claimant was driving his vehicle bearing registration No.TN-59-G-0618 from west to east along with one Police Inspector Ponram, a bus bearing registration No.TN-58-N-0475 belonging to the respondent Corporation came from the same direction and dashed behind the right back side of the Jeep, driven of the petitioner/claimant. Due to the sudden impact, the Jeep was capsized, in which the petitioner/claimant sustained multiple injuries all over the body. Seeking a compensation of Rs.4,00,000/- for the same, the petitioner/claimant filed a claim petition in M.C.O.P.No. 389 of 2009.



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4.The said claim was resisted by the respondent Corporation and a counter was also filed categorically submitting that the allegation made by the petitioner/claimant that the accident caused permanent disability to the petitioner/claimant has to be put to strict proof. That apart it was also pleaded that on 16.11.2007, at about 09.20 p.m., the respondent bus driver took the bus bearing registration No.TN-58-N-0475 from Madurai to Usilampatti trip from east to west direction after boarding and alighting the passengers in V.N. College bus stop. The respondent bus driver was driving the bus in a moderate speed and adhering all traffic rules, the petitioner's Jeep was proceeding before the respondent's bus in the same direction and when the bus was nearing the floor mill bus stop, unexpectedly the petitioner/claimant turned the Jeep suddenly to the right side of the road in order to reach the police Inspector's house, which is in the opposite side of the floor mill bus stop without adhering the traffic rules and regulations without giving any signal to the respondent bus driver. Though in order to avoid the accident, the respondent bus driver turned the bus to the right side of the road, the petitioner also turned the Jeep to the right side of the road and as the result of which, the



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respondent bus dashed against the petitioner's Jeep in the backside of the Jeep in the right side. Had the petitioner being careful and cautious and had observed the traffic rules, the accident could have been averted. The accident had happened only due to the negligence of the appellant/petitioner/claimant. Hence, the respondent Corporation is not liable to pay compensation and the amount claimed is also highly exorbitant.

5.Five witnesses were examined and Ex.P1 to Ex.P4 were marked on the side of the petitioner. One driver of TNSTC Ponnupandian was examined as R.W.1 and Ex.R1 was marked through him. After recording the evidence, the learned Tribunal heard the arguments advanced on both the sides and framed necessary points for determination and scrutinizing the evidence both the oral and documentary and upon appreciation of evidence held that both the appellant/petitioner/claimant and the driver of the respondent bus are equally responsible for the accident and thereby, fixed contributory negligence on both the drivers involved in the accident. On the basis of the evidence deposed by P.W.5, Dr.P.S.Shanmugam, the one who treated the petitioner and has assessed



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40% partially permanent disability of the petitioner/claimant through the Disability Certificate marked as Ex.P13. The learned Tribunal considering the age of the petitioner/claimant who was aged 35 years at the time of accident concluded that the appellant was entitled to Rs.2,000/- per percentage of partial permanent disability aggregating to the sum of Rs.80,000/- with regard to the compensation under the Head of partial permanent disability. The learned Tribunal accordingly awarded compensation is as follows:-

Head	Compensation awarded
(i)Partial Permanent Disability:	40% [Rs.2,000 per percentage (2000x40)] Rs.80,000/-
(ii)Transportation:	Rs.2,000/-
(iii)Extra Nourishment:	Rs.5,000/-
(iv)Pain and suffering:	Rs.30,000/-
(v)Loss of Future Prospects:	Rs.1,00,000/-
Total compensation awarded:	Rs.3,32,789/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6.Since the learned Tribunal decided that the petitioner/claimant is equally responsible for the accident occurred thereby, fixing contributory negligence on the part of the appellant/petitioner/claimant as well and concluded that the petitioner is entitled to half of the compensation



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awarded by the Tribunal, which is tune to the Rs.1,66,395/- I.e., half of Rs.3,32,789/-.

7.Challenging the same, the appeal came to be filed by the appellant/petitioner/claimant on the ground that the learned Tribunal ought not to fix contributory negligence 50% on the injured and the learned Tribunal ought to have awarded Rs.3,000/- per percentage towards the partial permanent disability, thereby, awarding a sum of Rs. 1,20,000/- for the disability and amount of Rs.10,000/- towards transportation expenses and Rs.25,000/- towards extra nourishment and Rs.50,000/- towards pain and suffering ought to have been awarded by the learned Tribunal.

8.Heard the learned counsel appearing for the appellant Mr.A.Hajamohideen and the learned Standing counsel appearing for the respondent Corporation Mr.P.Prabhakaran and perusal the materials available on records.

9.The claimant before the Tribunal is the appellant in the appeal.



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The claim was made by the appellant/petitioner/claimant before the Tribunal against the respondent Corporation. The Tribunal after enquiry and upon scrutinizing the evidence adduced, gave a definite finding that the accident happened not only due to negligence of the bus belonging to the respondent Corporation bearing Registration No.TN-58-N-0475 but also due to negligence of the appellant/petitioner/claimant driver who drove the Jeep bearing Registration No.TN-59-G-0618 in the right direction by turning suddenly without giving any signal to the bus belonging to the respondent Corporation for the purpose of reaching the Inspector's house situated in the opposite direction.

10.I have no hesitation to observe that the Tribunal after careful consideration of the evidence has concluded that both the claimant as well the driver of the respondent Corporation are equally responsible for the accident which occurred on 16.11.2007, thereby fixing the contributory negligence equally as 50% on both the drivers. I do not find any infirmity in the same. That apart the learned Tribunal has awarded a sum of Rs.1,00,000/- under the Head of loss of future prospects generously. Hence, the claim of the appellant by means of appeal to



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enhance the other heads namely partial permanent disability, transportation expenses, pain and suffering, extra nourishment and loss of amenities and medical assistance could not be awarded. Hence, this Court is not inclined to interfere with the award passed by the learned Tribunal.

11. Accordingly, the Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs.

03.01.2024

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

To

1. The Motor Accidents Claims Tribunal,
(Special District Judge), Madurai.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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