



WP(MD)No.5631 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 09.01.2025

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

WP(MD) No.5631 of 2019

B.Robin (died)

Baby Leela Bai
W/o.Late Robin
(Petitioner is substituted vide
order dated 24.09.2024
in WMP(MD)No.19001 of 2021)

... Petitioner

versus

1. The Managing Director,
Tamilnadu State Transport
Corporation (Tirunelveli),
Tirunelveli.
2. The General Manager,
Tamilnadu State Transport
Corporation (Tirunelveli),
Nagercoil Division,
Nesamony Nagar, Ranithottam,
Nagercoil – 629 001.
Kanyakumari District.
3. The Deputy Manager
(Recruitment/Personal Wing),
Tamilnadu State Transport
Corporation (Tirunelveli),
Nagercoil Division,



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Nesamony Nagar, Ranithottam,
Nagercoil – 629 001,
Kanyakumari District.

4. The Branch Manager,
Tamilnadu State Transport
Corporation (Tirunelveli),
Kuzhithurai Branch-I,
Kanyakumari District.

... Respondents

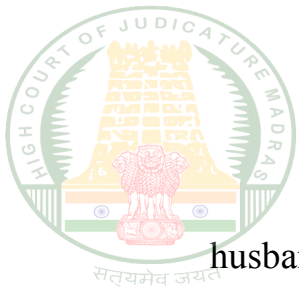
Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Mandamus, to direct the respondents herein to pass an order of retirement on the ground of medical invalidation with full monetary benefits till the actual date of his retirement along with Rs.25 lakhs towards compensation for loss of vision in both eyes.

For Petitioner : Mr.K.Vamanan

For Respondents : Mr.D.Jebaraj
Standing Counsel

ORDER

This writ petition was originally filed by one B.Robin, who was working as the driver of the Tamil Nadu State Transport Corporation, seeking compensation of Rs.25,00,000/- for loss of vision in both eyes. Pending this writ petition, the petitioner B.Robin died. Therefore, his wife Baby Leela Bai was substituted as the petitioner. The petitioner's



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husband Robin, while driving a bus in Route No.505 between Kaliyakkavilai to Madurai, the windshield of the bus was automatically broken and the broken glass particles had caused injuries on his right side eye ball. Therefore, he was taken to a nearby hospital, namely, Bejan Singh Eye Hospital, Nagercoil and admitted in the Intensive Care Unit and the glass particles inside the eye were removed. He also underwent a major eye surgery and he was discharged from the Hospital on 23.02.2006. Thereafter, he joined the duty in the month of May 2006.

2. While the petitioner Robin was on duty on 28.12.2010, he suffered bleeding in his right eye. Therefore, he went to the Ophthalmologist, where, he was diagnosed and informed that the vein leading to the eye is affected due to earlier injury. Thereafter, he was referred to the Aravind Eye Hospital for further treatment, where, a laser surgery was conducted. Again, he was suffering with severe pain in the eye. Therefore, he was suggested to undergo 'retina' surgery. He was also referred to Sankara Nethralaya Eye Hospital Chennai, where, he underwent 'retina' surgery on his right eye on 09.05.2011. Thereafter, on the advice of the Doctor, the petitioner Robin made a request for



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alternative employment, however, the same was not considered by the respondents. In the meantime, the petitioner Robin underwent another retina surgery on his left eye on 20.10.2011. Thereafter, he was provided with an alternative work as Traffic Controller for some time. However, again, he was compelled to do the driver job. On his repeated request, he was provided another alternative employment by the second respondent in the traffic control room with effect from 22.01.2013. However, within a short span, he was directed to drive the vehicle. Therefore, the petitioner Robin filed a writ petition before this Court in W.P.(MD)No. 5071 of 2014, seeking alternative employment as per Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This Court, by order dated 12.06.2014, disposed of the writ petition with a direction to the respondents to consider his representation dated 24.01.2014 and pass orders on the merits and in accordance with law within a period of four weeks.

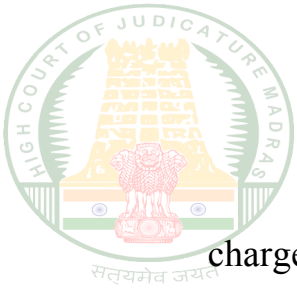
3. Pursuant to the order, the petitioner Robin was referred for medical opinion. The Medical Officer, who verified the petitioner Robin, submitted a report that he is suffering from proliferative advanced



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diabetic retinopathy in both eyes with defective vision in both eyes and he may be referred to medical board for fitness. Thereafter, the petitioner Robin appeared before the Medical Board on 10.09.2014. The Medical Board has given an opinion that he is not fit to continue as a Driver and he was recommended for light duty. However, the respondents did not provide any alternative employment. Therefore, the petitioner Robin, once again, approached this Court by filing another writ petition in W.P. (MD)No.20208 of 2014. Immediately after filing the writ petition, the 2nd respondent provided him an alternative job as Traffic Controller. By recording the submission of the respondents, the said writ petition was disposed of, with a further direction to the respondents to consider the request of the petitioner for monetary benefits within a stipulated time.

4. Pursuant to the order of this Court, the 3rd respondent sent a letter dated 21.04.2015 stating that the petitioner Robin was absent from duty from 28.01.2010 to 16.12.2014, i.e. for a period of 682 days and that period could be treated as 'leave on loss of pay'. Challenging the same, the petitioner Robin once again approached this Court in W.P.(MD)No. 17269 of 2015 and the same is pending. While so, he was issued with a



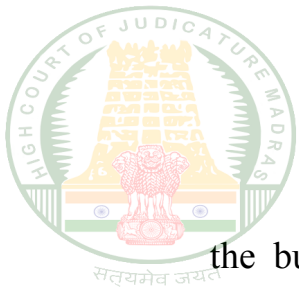
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charge memo on 05.07.2018 and an enquiry was also contemplated. The

Petitioner Robin along with his wife appeared for enquiry on 21.12.2018 and submitted his written explanation. He has also submitted a representation dated 07.01.2019, requesting the respondents to discharge him from duty on medical invalidation. But, the said representation has not been considered by the respondents. Therefore, the petitioner Robin has filed the present writ petition seeking a Mandamus to the respondents to pass an order of retirement on the ground of medical invalidation with full monetary benefits along with the compensation of Rs.25 lakhs for the loss of vision in both eyes.

5. When this Court has entertained this writ petition on 11.03.2019, the learned Standing Counsel for the Transport Corporation has taken notice for the respondents. However, the respondents/Tamil Nadu State Transport Corporation have not disputed the averments made in the writ petition and have not filed any counter affidavit.

6. The petitioner served as a Driver in the Tamilnadu State Transport Corporation. While he was driving a bus, the windshield of



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the bus was automatically broken. The windshield for the Transport Corporation Bus are made with certain standards. The windshield has to be prepared with safety glasses. The condition in the Motor Vehicle Acts and other proceedings on the quality of windshield is to ensure that such incident are prevented.

7. In India, the characteristics of such windshields is regulated under Rule 100 of the Central Motor Vehicle Rules 1998. It lays out that the glass of windscreens and windows of every motor vehicle other than agricultural tractors shall be made of “Safety Glass”. The Rule defines the same as follows:

“safety glass” means glass conforming to the specifications of the Bureau of Indian Standards or any International Standards and so manufactured or treated that if fractured, it does not fly or break into fragments capable of causing severe cuts.”

8. The Rule further provides that glass of the front windscreen of every motor vehicle other than two wheelers and agricultural tractors manufactured after three years from the coming into force of the Central



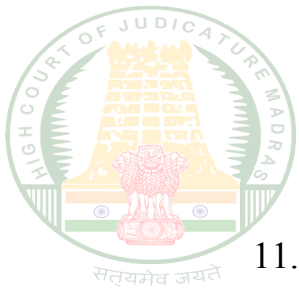
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Motor Vehicles (Amendment) Rules, 1993 shall be made of laminated safety glass. The Rule defines Laminated Safety Glass as follows:

“Laminated safety glass” shall mean two or more pieces of glass held together by an intervening layer or layers of plastic materials. The laminated safety glass will crack and break under sufficient impact, but the pieces of the glass tend to adhere to the plastic material and do not fly, and if a hole is produced, the edges would be less jagged than they would be in the case of an ordinary glass.”

9. The prior Indian Standard for safety glass used in road transport was IS 2553 (1992). Safety glass shall be made of 'AA' and 'A' quality [see IS 2835 : 1987] from flat transparent glass. The thickness of safety glass shall be measured in accordance with the method prescribed in 5.1 and Annex B of IS 2835 : 1987.

10. The Ministry of Commerce and Industry vide S.O.1045(E) dated 20, March 2020 has introduced the Safety Glass (Quality Control) Order, 2020. As per this order, the latest Indian standard for safety glass used in road transport, including windshields is IS 2553 (Part 2):2019.



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11. As per the standards, the purpose of providing standards for a windshield is as follows:

“a) to reduce the danger of bodily injury as far as possible in the event of shattering of a vehicle window;

b) to minimize the possibility of occupants being thrown through vehicle windows in collisions.”

12. However, the poor quality of windshield was procured by the Transport Corporation, which resulted in loss of eyes to the petitioner Robin. For no fault of him, he lost his eye-sight and he was also made to suffer from 2006 till his death. He suffered injury on his eyes and underwent surgery. The Medical Officers as well as the Medical Board gave a certificate that the petitioner Robin is not fit for driver post. However, he was not provided with an alternative employment. Instead, he was issued with a charge memo that he was unauthorizedly absent from duty.

13. The Tamil Nadu Transport Corporation, a Government undertaking, must be a model employer. The Driver as well as other staffs are serving for the Management and it is the responsibility of the



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Management for their good health. In this case, the windshield of a Bus was broken without any reason and the reasoning was not verified by the Management. The petitioner Robin has suffered injury on his eyes and underwent surgery. The Doctor, who examined him as well as the Medical Board has given a certificate that he is not fit for driver job. However, he was not provided with an alternative employment. Therefore, he filed a writ petition in W.P.(MD)No.20208 of 2014 before this Court. Immediately after filing the writ petition, the petitioner Robin was provided with an alternative employment. Recording the same, the said writ petition was disposed of by this Court, with a direction to the respondent to consider the request of the monetary benefits. Thereafter, the respondents took a stand that the petitioner Robin was unauthorizedly absent from duty from 28.01.2010 to 16.12.2014. Challenging the same, the petitioner Robin filed a writ petition in W.P.(MD)No.17269 of 2015 and same is pending. For the alleged unauthorized absent, a charge memo was issued only on 05.07.2018 and an enquiry was commenced in the month of November 2018.



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14.The petitioner Robin was referred to the Medical Officer on 20.08.2014 and thereafter, he appeared before the Medical Board on 10.09.2014.The Medical Officer as well as the Medical Board comprising of three Medical Officers submitted their report that the petitioner Robin is not fit for the driver post and he must be provided with an alternative employment. Even after the recommendations of the Medical Board, the petitioner Robin was not provided with an alternative employment.

15. In view of the corrupt practice and for having procured the poor quality of windshield by the Transport Corporation, the petitioner lost his eye-sight in both eyes and the same was confirmed by the Medical Officer as well as by the Medical Board. However, the petitioner Robin was not provided with an alternative employment. The petitioner has also made a request for medical invalidation, however, the same was not considered by the respondents. Instead, he was harassed by issuing a charge memo.



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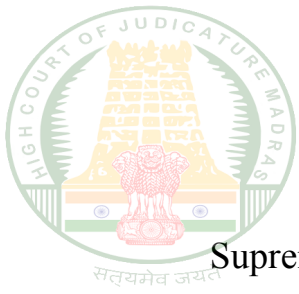
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16. The attitude of the respondent Corporation as against the petitioner Robin is callous. Therefore, this Court is satisfied with the averments made in the writ petition and it has not been controverted by any counter affidavit and therefore, this writ petition deserves to be allowed.

17. The object of awarding compensation in cases of injury is to make good the loss suffered as far as money can do so in a fair manner. The compensatory jurisprudence of High Courts is based on the Latin Maxim of *ubi jus ibi remedium* (where there is a right, there should also be a remedy for its breach). As a guardian over the constitutional rights, the High Court can exercise its jurisdiction under Article 226 to provide compensation to those whose rights have been violated.

18. In **General Manager, Kerala S.R.T.C vs Susamma Thomas** reported in (1994) AIR 1631, the Hon'ble Supreme Court has affirmed the multiplier method as the proper method to arrive at a just compensation in cases of death and injuries. As explained by the Hon'ble

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Supreme Court, this method involves the ascertainment of loss using a multiplier which depends on the age of the affected party and multiplicand, which assesses the earning capacity of the affected party.

19. In **Sarla Verma vs. Delhi Transport Corporation** reported in **AIR (2009) SC 3104**, the Hon'ble Supreme Court has held that the addition to future earning prospects should be fixed as 50% as a rule of thumb and has specified the exact multiplier to be used for each age group.

20. The Hon'ble Supreme Court in **Sidram v. United India Insurance Co. Ltd** reported in **(2023) 3 SCC 439** has laid down the principles to be considered, when determining compensation for pain and suffering, as follows:

“Pain and suffering would be categorized as a non-pecuniary loss as it is incapable of being arithmetically calculated. Therefore, when compensation is to be awarded for pain and suffering, special circumstances of the claimant have to be taken into



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account including the victim's age, the unusual deprivation the victim has suffered, the effect thereof on his or her future life."

21. The petitioner was aged about 38 years on the date of accident. His monthly income was Rs.9,334/- at the relevant point of time. Taking into account 100% functional disability due to blindness in both eyes as a result of the said accident and the welfare of dependents, this Court is inclined to grant compensation in exercise of its power under Article 226 of the Constitution of India.

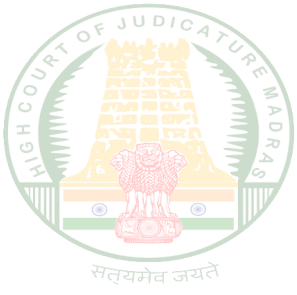
22. Therefore, in line with the above principles, a multiplier of 15 can be adopted. Further for loss of future earning capacity, the annual income with a 50% addition, can be adopted, thus Rs.9334/- + Rs.4,667/- (50% of Rs.9334, monthly income)= Rs.14,001/-, accordingly, 15 X 12 X 14,001/- = Rs.16,12,800/- is fixed as loss of future earning capacity. According compensation is arrived at as follows:



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S.No	Category	Amount (in Rs)
1	Medical expenditure	1,50,000
2	Loss of future earning capacity	9334 + 4667 (50% increase) = 14,001 X12X15 = 16,12,800/-
3	Transportation expenditure	20,000
4	Pain and sufferings, mental agony	3,00,000
5	Nourishment and attendant charges	15,000
6	Compensation for disfigurement	50,000
7	Loss of amenities and enjoyment of life	50,000
	Total	21,97,800/-

23. Therefore, a compensation of Rs.21,97,800/- along with interest of 6% from the date of filing of this petition till realisation would be just and reasonable in the present circumstance. The respondent Corporation is directed to pay a sum of Rs.21,97,800/- (Rupees Twenty One Lakh Ninety Seven Thousand and Eight Hundred) with interest of 6% per annum, to the writ petitioner within a period of eight weeks from the date of receipt of a copy of this order.



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24. Accordingly, this writ petition is allowed in the above terms.

No costs.

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NCC : Yes / No.

Index : Yes / No.

Internet: Yes/No.

To

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B.PUGALENDHI, J.

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