

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.04.2023**

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CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.441 of 2023
and
C.M.P(MD)No.5465 of 2023

Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
represented by its Managing Director,
Periyamilaguparai,
Tiruchirappalli.

:Appellant/Respondent

.VS.

P.Saravanan

(At the time of filing, the Petitioner is a minor and as per
order in I.A.No.747 of 2019, dated 3.2.2020, he was declared
major)

:Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act against the judgment and award made in
M.C.O.P.No.216 of 2019, dated 26.10.2021, on the file of the Motor
Accidents Claims Tribunal(The Chief Judicial Magistrate Court),
Karur.

For Appellant

:Mr.D.Sivaraman

For Respondent

:Mr.K.Suresh



JUDGMENT

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Challenging the liability and quantum, the present Civil Miscellaneous Appeal came to be filed by the appellant/Insurance Company.

2.The parties are referred to herin as per their ranking before the Tribunal.

3.The brief facts leading to the filing of the appeal is as follows:

The injured is aged about 15 years, a student, travelled in ther bus belonging to the appellant-Transport Corporation bearing Registration NO.TN 45 N 2346. When the bus crossed the speed breaker at Uppidamangalam to Puliur road under the byepass bridge, the Petitioner fell down from the bus and sustained greivous injuries on the left great toe and also sustained fracature on the second toe of the left leg. He has been admitted in Coimbatore K.G.Hospital and thereafter in Ganga Hospital,Coimbatore and was treated as inpatient from 29.1.2016 to 2.3.2016. Hence he claimed compensation of Rs.10 lakhs.



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4.It is the contention of the appellant before the Tribunal that the bus was proceeding in a normal speed, however the Petitioner boarded into the bus and travelled in the foot-board and despite the warning given by the Conductor, the Petitioner travelled in the rear foot-board by keeping his left leg dangling. When the bus was near Uppidamangalam to Puliyur road under Bye pass bridge, in order to tide over the speed braker, driver of the bus slowed down the bus and at that time the left leg of the petitioner hit against the speed braker and got injured as stated above.

5.Before the Tribunal, on the side of the Petitioner, P.W.1 and P.W.2 were marked and Ex.P1 to Ex.P12 were marked. On the side of the respondent, R.W.1 was examined and no documents were marked.

6.On a perusal of the evidence of P.W.1 and P.W.2, the trial Court has found that the driver of the offending vehicle drove the vehicle in a rash and negligent manner and awarded the compensation as follows:

- | | |
|----------------------------|-----------------|
| 1.for permanent disability | - Rs.4,53,600/- |
| 2.for temporary disability | -Rs.35,000/- |
| 3.for pain and suffering | -Rs.70,000/- |
| 4.for transport expenses | - Rs.20,000/- |



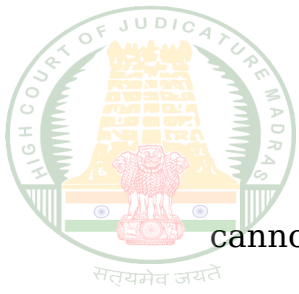
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including Ambulance bills	
5.for attendant charges	-Rs.10,000/-
6.for nutrition	-Rs.10,000/-
7.for medical bills	-Rs.28,710/-
8.for marital prospects	-Rs.1,00,000/-
9.for loss of amenities	-Rs.10,000/-
10.for loss of damage to clothes	-Rs.2,000/-

total	-Rs.7,39,310.50

7.The learned counsel for the appellant Transport Corporation would submit that the evidence of P.W.I clearly indicate that the petitioner was travelling in footboard and despite the warning given by the Conductor of the bus, the Petitioner has not gone into the bus and continued to travel in the foot board and invited the accident.Thus there is contributory negligence on the part of the injured and therefore, some amount has to be deducted for the same.The Tribunal has also awarded compensation for the temporary disability despite the fact that already multiplier method for permanent disability is adopted. Hence the learned counsel seeks interference of this Court in the award of the Tribunal.

8.The learned counsel for the respondent would submit that the Tribunal has appreciated the evidence properly and merely because the respondent travelled in the footboard the appellant



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cannot be absolved from its liability. If any one travelled in the board, it is the duty of the Conductor and Driver to warn them to go inside the bus. Thus the Tribunal has correctly awarded the compensation and it needs no interference and prayed for dismissal of the appeal.

9. In the light of the above facts, now the point that arose for consideration is as follows:

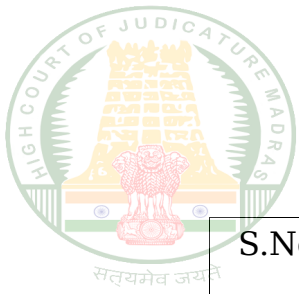
1. Whether the Tribunal is right in awarding the compensation fixing the liability on the appellant Transport Corporation and whether the quantum fixed by the Tribunal is correct?

10. It is not in dispute that the injured travelled in the bus in footboard and on 29.2.2016, when the bus crossed the speed breaker and when the bus was slow down, the left leg of the injured hit the speed breaker and got crushed and then amputated besides the second great toe of the left leg has also got fractured. The evidence of P.W.1 himself indicates that he was travelling in the footboard. Though it is the duty of the driver and conductor to warn the passengers to go inside the bus to avoid footboard travelling, now a days, even the college students travelled in the



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footboard continuously despite the warning given by the Conductor and this fact cannot be ignored altogether. Hence, this Court is of the view that the minor travelling in footboard and got injured when the bus was slowed down in the speed breaker, some negligence also to be fixed on the part of the injured. Considering the nature of the injury, this Court is of the view that 10% contributory negligence is to be fixed on the injured and the same will meet the ends of justice. Accordingly 10% of the contributory negligence is fixed on the injured and the Tribunal has adopted multiplied taking note of the fact that the left second toe of the respondent/petitioner got amputated. Having adopted multiplier method, the Tribunal has also awarded a sum of Rs.35,000/- for temporary disability at the rate of Rs.5000/- per percentage of injury for the fracture on the great toe of the left leg. This Court is of the view that adopting Rs.5000/- per percentage of injury is also excessive and accordingly, the same is reduced to Rs.3000/- for every percentage of temporary disability and the same will come to Rs.21,000/- and other awards awarded by the Tribunal under other heads stand confirmed and thus the compensation is arrived is arrived as follows:



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S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For permanent disability	Rs. 4,53,600/-	Rs. 4,53,600/-	same
2	For temporary disability	Rs.35,000/-	Rs.21,000/-	reduced
3	For pain and suffering	Rs.70,000/-	Rs.70,000/-	
4	For transport expenses including ambulance bills	Rs.20,000/-	Rs.20,000/-	same
5.	For attendant charges	Rs.10,000/-	Rs.10,000/-	Same
6.	For nutrition	Rs.10,000/-	Rs.10,000/-	Same
7	For medical bills	Rs. 28,710.50/-	Rs. 28,710.50/-	same
8	For marital prospects	Rs. 1,00,000/-	Rs. 1,00,000/-	Same
9	For loss of amenities	Rs.10,000/-	Rs.10,000/-	Same
10	For loss of damage to clothes	Rs.2,000/-	Rs.2,000/-	Same
11	Total	Rs. 7,39,310.50/-	Rs. 7,25,310.50/-	reduced

from the above award amount, if 10% of the amount is deducted towards the contributory negligence on the part of the injured as fix by this Court, the total compensation payable to the Petitioner is Rs.6,52,779/-(Rs.7,25,310.50 - Rs.72,531/-) rounded off to Rs. 6,53,000/- with interest at the rate of 7.5% from the date of claim

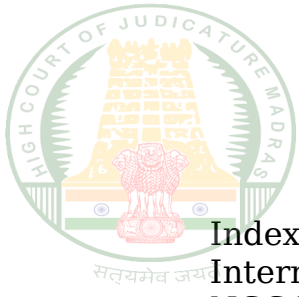


petition till the date of realization.

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11. In the result, the Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.7,39,310.50/- to Rs. 6,53,000/- with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The appellant Transport Corporation is directed to deposit the above said modified award amount with proportionate accrued interest and costs, less the award amount if any already deposited, to the credit of claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made the Petitioner/Respondent/Claimant is permitted to withdraw the above said award amount with accrued interest and costs, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal. If the appellant Transport Corporation already deposited the entire compensation amount as ordered by the Tribunal, the appellant is permitted to withdraw excess award amount from the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

28.04.2023



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

To

- 1.The Motor Accidents Claims Tribunal,
(The Chief Judicial Magistrate Court),
Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

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