

**(2009) 10 MAD CK 0131**

**Madras High Court**

**Case No:** C.M.A. No. 953 of 2005 and C.M.P. No. 5185 of 2005

The Managing Director, Tamil  
Nadu State Transport  
Corporation (Salem) Limited

APPELLANT

Vs

Sathishkumar, G.N. Anand Babu  
and The National Insurance  
Company Limited

RESPONDENT

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**Date of Decision:** Oct. 8, 2009

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 279, 337

**Hon'ble Judges:** C.S. Karnan, J

**Bench:** Single Bench

**Advocate:** V. Ramesh, for the Appellant; No appearance, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

C.S. Karnan, J.

This appeal has been filed by the appellant/first respondent against the decree and judgment dated 07.01.2004 passed in MCOP No. 264 of 2002 on the file of Motor Accident Claims Tribunal/Subordinate Court, Krishnagiri awarding a compensation of Rs. 85,525/- together with interest at the rate of 9% per annum from the date of filing the petition till date of payment of compensation.

2. The respondent/claimant has filed the claim petition claiming a total compensation of Rs. 1,88,000/- and has restricted the same to a sum of Rs. 1,00,000/-. Aggrieved by the award passed by the Tribunal, the appellant/State Transport Corporation has preferred this appeal before this Court.

3. The short facts of the case are as follows:

On 18.12.1999, the petitioner was travelling in the corporation bus bearing registration No. TN-27-0588, to go to Salem. At about 5 p.m. the driver of the said

bus, drove the bus at a great speed, in a rash and negligent manner, without observing Traffic rules and dashed against a lorry bearing registration No. KA-40-5500, which was returning to Hubli from Pallipalayam, after unloading empty cylinders as a result of which, the petitioner who was in the bus sustained injuries on his upper hip and teeth. The petitioner's mouth got smashed and two teeth were broken. The petitioner was immediately taken to L.K.G. Hospital, Erode, for treatment. There, he underwent treatment as inpatient for a period of 10 days.

At the time of accident, the petitioner was hale and healthy and his age was 22 years, and he was working in a private school at Palacode as a teacher and drawing a sum of Rs. 1,500/- per month. The petitioner, after undergoing treatment as inpatient in the hospital had continued treatment for three months as outpatient. Due to this accident, he has incurred a lot of miscellaneous expenditure. The petitioner further submitted that due to fracture of hip and loss of his teeth, his original physical appearance and his face has been disfigured. As such, he lost better marital alliance. The doctor had also advised him to replace his teeth. The accident had occurred due to rash and negligent driving of the bus driven by its driver bearing registration No. TN-27-N-0588. Since the bus dashed against the lorry bearing registration No. KA-40-5500, hence, the owner of the lorry and its insurer, national insurance company are also ordered as formal parties for proper adjudication of the claim petition. Regarding this accident, a criminal case was registered by Magudanchavadi police station in Cr. No. 1148 of 1999 on an alleged offence under Sections 279 and 337 of IPC.

4. The first respondent/State Transport Corporation has filed counter statement and opposed the claim made by the petitioner. The respondent denied that the petitioner had been a passenger in the bus. The driver of the bus had driven the vehicle with normal speed, but the lorry which had been driven by its driver in a rash and negligent manner. As such the first respondent is not responsible for the accident and is not liable to pay compensation to the petitioner. The respondent does not admit the age, occupation and income of the petitioner. Further, the respondent denies that the petitioner was a teacher in a private school. Due to this accident, the petitioner's normal life has not been affected. The petitioners claim of Rs. 1,00,000/- is too high.

5. The third respondent/National Insurance Company Limited, has filed the counter statement and opposed the petitioner's claim. On the date of and time of the accident, the driver of the lorry, bearing registration No. KA-40-5500 had driven the vehicle with due care. The driver of the bus had driven the vehicle in a rash and negligent manner and dashed against the lorry. The third respondent also has denied the age, occupation and income of the petitioner.

6. On the side of the respondent/claimant, 4 witnesses were examined and 9 documents were marked. On the side of the respondent, two witnesses were examined as RW1 and RW2, but no documents were marked.

7. The learned Tribunal framed three issues namely, 1) Who was responsible for the said accident? 2) Whether the claimant is entitled to get compensation as prayed and 3) What is the other relief?
8. The learned Tribunal passed a common order in MCOP Nos. 264 and 265 of 2002. MCOP No. 265 of 2002 has been filed by one Kanthamani, who was examined as PW1. PW1, Kanthamani, in her statement had stated that she and her son had travelled from Salem to Erode in the respondent bus. The driver of the bus had driven the bus with high speed and in a rash and negligent manner and dashed against the lorry. Regarding the said accident, PW1 marked Ex.P1, as first information report, Ex.P2 as wound certificate, Ex.P3-Motor Vehicle Inspectors report, Ex.P4 and Ex.P5 medical expenses bill. PW2, the claimant in the present case has tendered evidence that he sustained injuries in the said accident. Immediately he was admitted in the LKG Hospital, wherein he underwent treatment for a period of 9 days, as inpatient. He marked Ex.P6, wound certificate, Ex.P7-medical bill.
9. On the side of the respondent, RW1, one Gunaseelan tendered evidence and stated that he was the driver of the first respondent's bus. While he was driving the bus from Salem to Erode, nearing Magudan Chavadi bus stop, the bus was stopped and passengers had got down. Thereafter, the driver of the bus had driven the bus in a slow manner. At that time, the lorry came at a high speed and dashed against the bus. The accident happened due to the negligence of the driver.
10. RW2, one Ulaganatha pillai was examined and he stated in his evidence that the first respondent's bus was the cause for the said accident. The third respondent was ordered as a formal party. Further, he admitted that the first respondent is liable to pay compensation.
11. Considering the evidence of the PW1, PW2 and RW1 and RW2, the learned Tribunal has come to a conclusion, after perusal of the first information report, that the third respondent is a formal party and that it is only the first respondent bus driver, who was at fault. So, the first respondent corporation is liable to pay compensation to the claimant. Following the decision, the learned Tribunal has come to a conclusion to award compensation to the claimant.
12. In the claimant's evidence, three teeth in the upper jaw were broken. So, the neighbouring teeth had also become loose. the face of the claimant has become ugly. He had undergone treatment at Private Hospital in Dharmapuri and Erode. Supporting this, Ex.P6 wound certificate was marked. As per wound certificate one grievous injury and one simply injury had been sustained. PW4, one Dr. Ravishankar was examined and he gave evidence that a tooth in the right side of first tooth in jaw had fallen and the first and second teeth on the left side of jaw had been broken. As such, the petitioners face has been changed. The Doctor fixed the permanent disability of petitioner as 35%. The disability certificate has been marked as Ex.P9. As per evidence of PW4 and Ex.P6, wound certificate of claimant and

disability certificate of claimant, the Tribunal awarded the compensation as below.

The claimant's income was fixed at Rs. 18,000/- per year and his age was taken as 22, as per wound certificate and so a factor of 17 had been taken as multiplier. The disability was only taken as 15% and compensation awarded for disability distress =  $15/100 \times 18000 \times 17 = 2700 \times 17 = \text{Rs. } 45,900$  was given.

For grievous injuries Rs. 25,000/- was granted; for pain and suffering Rs. 5,000/- was granted; For nutrition Rs. 3000 was granted; The Tribunal further awarded 9% interest for award amount from the date of filing the petition till date of payment of compensation. The Tribunal also awarded Rs. 4,095/- as advocate fees.

13. The learned Counsel for the appellant raised the grounds in his appeal that PW2, was an interested witness to get higher compensation. Ex.P1 was not marked by the author of the document. No police officer was examined to prove the negligence on the part of the bus driver.

14. PW2's age, occupation and income were not properly considered by the Tribunal. The Tribunal awarded the compensation as below:

For disability - Rs. 45,900 and grievous injury Rs. 25,000 + Pain and suffering Rs. 5,000/- + Nourishment Rs. 3,000/-. Altogether, a total of Rs. 78,900/- is payable but the Tribunal has arrived at a figure of Rs. 85,525/- which is not correct.

15. For the foregoing reasons and perusal of facts and circumstances of the case, this Court opines that the award passed by the Tribunal is only Rs. 78,900 together with interest at the rate of 9% per annum from the date of filing of the petition till date of payment of compensation and that is payable by the appellant/State Transport Corporation. The learned Motor Accident Claims Tribunal, Subordinate Court Krishnagiri has committed an arithmetical error in calculation of award in his order, wherein it has been mentioned as Rs. 85,525/-. The learned Motor Accident Claims Tribunal had awarded Rs. 78,900 under four heads but had arithmetically committed error and has awarded Rs. 85,525/-. This error has now been rectified by this Court and the award is confirmed as Rs. 78,900/- under the four heads. The Court is of the view that as the claimant is a Teacher, and due to a loss of a tooth in the jaw and two other teeth having been broken, it would impair the speech of the claimant, which is essential for his teaching professing. Further the Doctor has certified 35% disability, but the Tribunal without assigning any reason has reduced it by 20% and calculated compensation. Considering these two facts, the Court declines to interfere with the compensation awarded by the learned Motor Accident Claims Tribunal/Subordinate Court, Krishnagiri in MCOP No. 264 of 2002 dated 07.01.2004. Therefore, the said award of Rs. 78,900/- is confirmed.

16. The above said appeal came before this Court on 30.03.2005. This Court directed the appellant to deposit the entire compensation amount to the credit of MCOP No. 264 of 2002 on the file of the Subordinate Court, Krishnagiri. This Court permitted

the respondent/claimant to withdraw half of the amount. The balance amount was to be deposited in a nationalised bank in the investment scheme.

17. The accident happened in the year 1999 and hence it is open to the respondent/claimant to receive the balance amount lying to the credit of MCOP No. 264 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Krishnagiri by filing necessary payment out application in accordance with law. Likewise, liberty is given to the appellant/State Transport Corporation to receive the balance amount from the tribunal.

18. In the result, the civil miscellaneous appeal is allowed in the above terms and consequently, the award passed by the Motor Accident Claims Tribunal, Subordinate Court, Krishnagiri in MCOP No. 264 of 2002 is modified. Accordingly, the connected miscellaneous petition is closed. The parties are directed to bear their own cost in this appeal.