



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.196 & 455 of 2023

The Managing Director
Karnataka State Road Transport Corporation Ltd.,
Ramanagara Division
Archakarahalli
Ramanagara-562 159
Karnataka State.

..Appellant
in Both CMAs

.Vs.

Mr.Thirupathi

..Respondent
in CMA No.196 of 2023

Mr.Sivasakthi

..Respondent
in CMA No.455 of 2023

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 22.03.2022 made in M.C.O.P.Nos.161 & 223 of 2019 on the file of the Special Sub Judge (Motor Accident Claims Tribunal) Krishnagiri.

For Appellant : Mr.T.Thiyagarajan
(Both CMAs)

For Respondent : Mr.S.P.Yuvaraj
(Both CMAs)

COMMON JUDGMENT

These appeals have been filed by the Transport Corporation against the award passed by the Special Sub Judge (Motor Accident Claims Tribunal) Krishnagiri, in



MCOP Nos.161 & 223 of 2019, dated 22.3.2022.

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2.The case of the claimants is that on 17.6.2018 the claimant in MCOP No.161 of 2019 was driving a Car and the Claimant in MCOP No.223 of 2019, as a passenger accompanied him. The Car was travelling from Uthangarai to Tiruvannamalai and at about 12.30 a.m., on 18.06.2018, the Bus belonging to the appellant Corporation which was proceeding from Tiruvannamalai towards Uthangarai was driven in a rash and negligent manner and it dashed on the Car. As a result of this accident, the claimant in MCOP No.161 of 2019 sustained shaft of fracture right femur, fracture right clavicle, fracture left condyle and type II open fracture right patella. The claimant in MCOP No.223 of 2019 suffered fracture of middle 1/3 shaft of right humerus.

3.The claimant in MCOP No.161 of 2019 underwent treatment as an inpatient from 18.06.2018 to 01.07.2018. The other claimant in MCOP No.223 of 2019, underwent treatment as an inpatient from 18.06.2018 to 23.06.2018. Based on the complaint given by the driver of the Bus, an FIR came to be registered in Crime No.277 of 2018, against the driver of the Car who is the claimant in MCOP No.161 of 2019. It is under these circumstances, the claim petitions came to be filed before the Tribunal seeking for payment of compensation.

4.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the



accident had taken place only due to the rash and negligent driving on the part of the driver of the Bus.

5.The Tribunal having rendered the above finding proceeded to fix the total compensation at Rs.9,67,786/- in MCOP.No.161 of 2019 under various heads as follows:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of earning power	5,20,200/-
2.	Transport, Nutrition and attender charges	25,000/-
3.	Pain and Sufferings	52,000/-
4.	Loss of amenities and enjoyment of life	52,000/-
5.	Medical Bills	3,18,586/-
	Total	9,67,786/-

insofar as MCOP No.223 of 2019, the Tribunal fixed the total compensation at Rs.3,81,690/- under various heads as follows.

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	40% permanent disability (40% x 5000)	2,00,000/-
2.	Medical Bills	75,690/-
2.	Transport and Nutrition, attender charges	25,000/-
3.	Pain and Sufferings	32,000/-
4.	Loss of amenities and enjoyment of life	32,000/-
5.	Partial loss of Income	17,000/-
	Total	3,81,690/-



6.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

7.The Transport Corporation questioning the negligence and liability to pay the compensation has filed the present appeals before this Court.

8.Heard Mr.T.Thiyagarajan, learned counsel for the appellant – Transport Corporation and Mr.S.P.Yuvaraj, learned counsel for the respondent.

9.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also gone through the award passed by the Tribunal.

10.The case of the claimants is that the offending vehicle which belongs to the appellant Transport Corporation was driven in a rash and negligent manner and it dashed against the Car that was going from Uthangarai to Tiruvannamalai. The claimant in MCOP No.161 of 2019 was examined as PW.1. The claimant in MCOP No.223 of 2019 was examined as PW.2. Both of them made a statement in the witness box alleging that the negligence was on the part of the driver of the offending vehicle.



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11.The driver of the offending vehicle was examined as RW.1 in this case.

For proper appreciation, the entire evidence of RW-1 is extracted hereunder:

மு.வி - நான் தற்போது மாவறடி ராம்நகரா டெப்போவில் ஓட்டுனராக பணிபுரிந்து வருகிறேன். 17.06.2018 அன்று நான் அதே டெப்போவில் ஓட்டுனராக பணியாற்றி வந்தேன். கே.ஏ.42 எப்.2109 வாகனத்தை திருவண்ணாமலையிலிருந்து, இரவு 11.00 மணிக்கு எடுத்து பெங்களூர் நோக்கி வந்து கொண்டிருந்தேன். ஊத்தங்கரைக்கு முன்பு பாம்பாறு பாலம் கடந்த பிறகு நான் எனது இடது பக்கமாக ரோட்டில் ஓட்டி வந்த போது, ஏதிரே கார் வேகமாக தனக்கு முன்னால் சென்ற வாகனத்தை முந்தி வந்து பேருந்தின் மீது மோதி விபத்து ஏற்படுத்திவிட்டது. நான் சம்பவத்தின் போது பேருந்தை மெதுவாக தான் ஓட்டி சென்றேன். கார் ஓட்டுனர் தான் அதிவேகமாக ஓட்டி வந்து விபத்தை ஏற்படுத்திவிட்டார். நான் காவல் நிலையத்தில் புகார் கொடுத்தேன். கார் ஓட்டுனர் மீது வழக்கு பதிவு செய்யப்பட்டுள்ளது. விபத்திற்கு கார் ஓட்டுனர் தான் காரணம். என் மீது தவறு எதுவும் இல்லை. அதனால் எங்கள் நிர்வாகம் அவருக்கும் இழப்பீடு வழங்க தேலையில்லை. மனுதாரர், கார் காப்பீட்டாளரிடம் தான் இழப்பீடு கேட்க முடியும்.

கு.வி - நான் புகார் கன்னடத்தில் தான் சொன்னேன். எனக்கு தமிழ் தெரியாது. அதனால் புகாரில் என்ன எழுதப்பட்டது என்று எனக்கு தெரியாது. விபத்து நடந்த இடம் சற்று வளைவான பகுதி ஆகும். நான் தான் துக்க கலகத்தில் ஏதிரே வந்த காரின் மீது மோதி விபத்தை ஏற்படுத்திவிட்டேன் என்றால் சரியல்ல. விபத்தில் காரில் வந்தவர்களுக்கு காயம் ஏற்பட்டதால் அவர்கள் மருத்துவனையில் இருந்ததை சாதகமாக பயன்படுத்தி கொண்டு நான் கார் ஓட்டுனர் மீது பொய்யாக புகார் கொடுத்தேன் என்றால் சரியல்ல. போலீஸ் விசாரணை முடிவில் கார் ஓட்டுனர் மீது தவறு இல்லை என்று நான் கொடுத்த புகார் பொய்யானது என்று முடிக்கப்பட்டதா என்று எனக்கு தெரியாது. அதனால் எங்கள் நிர்வாகம் மனுதாரருக்கு இழப்பீடு கொடுக்க வேண்டும் என்று சொன்னால்



சரியல்ல. நான் நிர்வாகம் சார்பாக பொய் சாட்சி அளிக்கிறேன் என்றால் சரியல்ல.

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12.It is also relevant to extract the Rough Sketch which was marked as Ex.X-4, before the Tribunal.

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13.It must also be borne in mind that the FIR was registered against the driver of the Car in Crime No.277 of 2018, based on the complaint given by the driver of the Bus. On completion of investigation, a final report was also filed against the claimant in MCOP No.161 of 2019, for offence under Section 279 and 338 IPC. Ultimately, it seems that the criminal case ended in an acquittal by giving the benefit of doubt to the accused person.

14.There are certain important factors which was not taken note of by the Tribunal. The first among them is that if really there was negligence on the part of the driver of the bus belonging to the appellant Transport Corporation, there was absolutely no reason as to why both the claimants did not give any complaint against the driver of the Bus. Just because the driver of the bus had given the complaint against the driver of the Car, that does not prevent in giving a counter complaint and it is a common practise where both FIRs can be investigated as a case and case in counter.

15.The examination of RW.1 has been extracted supra. It is seen that the evidence of RW.1 has not been discredited. In fact, it is perfectly in line with the rough sketch which was marked as Ex.X-4. On carefully looking at the rough sketch it is seen that the Car that was driven by the claimant in MCOP No.161 of 2019 was proceeding from Uthangarai to Tiruvannamalai. The Bus was coming from



Tiruvannamalai and proceeding towards Uthangarai. The Car has virtually gone to the other side of the road resulting in a head on collision with the Bus. The driver of the bus has clearly stated that the Car was attempting to overtake another vehicle that was going in front and as a result, it came to the other side of the road and it dashed on the Bus that was coming from Tiruvannamali towards Uthangarai. This vital fact has not been taken note of by the Tribunal.

16.The learned counsel for the claimants submitted that even if some amount of negligence is attributable against the claimants, that does not mean that they can be denied of the entire claim made by them.

17.The concept of contributory negligence relates to a case where there is an element of negligence on both sides. If this accident had taken place in the middle of the road, there is some meaning in considering the issue of contributory negligence. In the case in hand, the Car has virtually gone to the other side of the road and dashed on the Bus. Therefore, there was no occasion for the bus driver to stop this accident since he was proceeding at a reasonable speed from Tiruvannamalai to Uthangarai. The accident had taken place in the midnight at 12.30 p.m. This is yet another factor which has to be kept in mind by this Court. In view of the same, this Court does not find any negligence on the part of the driver of the Bus belonging to the appellant Corporation.



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18.The Tribunal failed to properly appreciate the evidence and went wrong in attributing the entire negligence on the part of the driver of the Bus belonging to the appellant Corporation. Such finding is liable to be interfered by this Court and accordingly, the same is hereby set aside.

19.In the result, the award passed by the Tribunal in MCOP Nos.161 & 223 of 2019, dated 22.03.2022, is hereby set aside and both the appeals are allowed. If the appellant – Transport Corporation had deposited any amount, the same shall be permitted to be withdrawn with accrued interest. No costs.

29.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
kp

To
Special Sub Judge
(Motor Accident Claims Tribunal)
Krishnagiri.



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N. ANAND VENKATESH., J

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29.07.2024