

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1469 of 2013

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.
No.12, Ramakrishna Road,
Salem - 7.

.... Appellant/Respondent

Vs.

Madhu

.... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 15.11.2012 made in M.A.C.T.O.P No.147 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Dharmapuri.

For Appellant : Mr.D.Venkatachalam
For Respondent : Mr.V.Kumaravelan

J U D G M E N T

The Transport Corporation has come up with this appeal mainly challenging the negligence fixed by the Tribunal.

2. Heard the learned counsel on either side.

3. On 13.06.2011, when the claimant was travelling as a passenger in the appellant Transport Corporation Bus bearing Registration No.TN 30 N 0501 from Salem to Namakkal, the bus failed to stop at Andagalur Gate Bus Stop and proceeded on the flyover, instead of going on the Service Road. When the passengers requested the Driver to drop them on the Service Road, the driver of the Bus reversed the Bus to enter into the Service Road and while so, a Container Lorry bearing Registration No.MH 06 K 6682 came in a rash and negligent manner and dashed against the bus and caused the accident. The claimant sustained multiple grievous injuries in the said accident and immediately, he was admitted in K.J. Hospital, Salem as an inpatient for treatment. He filed a Claim Petition before the Tribunal seeking a sum of Rs.7,00,000/- as compensation for the injuries. After analyzing the available oral and documentary evidence, the Tribunal fixed the negligence on the Driver of the appellant Transport Corporation Bus and awarded a sum of Rs.1,00,000/- as compensation to the claimant under the following heads:

Heads	Amount
20% Disability (Rs.2000/- x 20)	Rs. 40,000.00
Medical expenses	Rs. 27,000.00
Pain and Suffering	Rs. 10,000.00
Loss of income (Rs.4000/- x 3)	Rs. 12,000.00
Transportation expenses and extra nourishment	Rs. 10,000.00
Attender charges	Rs. 1,000.00
Total	Rs.1,00,000.00

4. It is the contention of the learned counsel appearing for the appellant/Transport Corporation that the Tribunal ought to have considered the evidence of R.W.1 - Driver of the Bus, who is a fit person to speak about the accident. It is also his contention that the Tribunal failed to note that the claimant has not arrayed the owner and Insurance Company of the container Lorry which caused the accident. Further, he contended that the Tribunal ought not to have fixed the permanent disability of the claimant at 20%.

5. A perusal of the records would show that the driver of the Bus has taken the Bus in the reverse direction on a flyover in a National Highway, which itself is violative of Rules. Moreover, fixation of negligence cannot be based on the registration of FIR alone, as FIR is not a substantive piece of evidence and it cannot be placed on a higher pedestal than the statement of oath. Hence, this Court is of the view that the negligence fixed by the Tribunal on the Driver of the appellant Transport Corporation Bus cannot be faulted with and the same is confirmed.

6. It is further seen from the records that the claimant has sustained fracture below his right eye and injuries on his right cheek and P.W.2 - Doctor who examined the claimant assessed his permanent disability at 30%. But, the Tribunal has fixed the disability of the claimant at 20% and the same does not warrant interference by this Court in view of the injuries sustained by him. Though the claimant has stated that he was earning a sum of Rs.7,500/- per month by doing masonry work, the Tribunal has fixed only a sum of Rs.4,000/- as his monthly income and I do not find any error in it. Also, the compensation granted under other heads are just and reasonable and they are confirmed.

7. In fine, the Civil Miscellaneous Appeal is dismissed, confirming the negligence as also the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. It is made clear that if no amount is deposited so far, the appellant/Transport Corporation is directed to deposit the entire award amount together with

accrued interest to the credit of M.C.O.P.No.147 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Dharmapuri within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To :

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Dharmapuri.

Copy to : The Record Keeper, VR Section,
High Court, Madras.

+1cc to Mr.D. Venkatachalam, Advocate, S.R.No.14515
+1cc to M/s. V. Kumaravelan, Advocate, S.R.No.14572

PPA(CO)
EU(26/09/2016)

C.M.A.No.1469 of 2013

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