



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2017

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1322 of 2011

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
(Madurai Division II), Vannerpettai,
Tirunelveli. ... Appellant/Respondent

vs.

Nagarajan ... Respondent/Claimant

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.295 of 2004, dated 28.04.2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirunelveli.

For Appellant : Mr.D.Sivaraman
for Mr.Rajnish Pathiyil

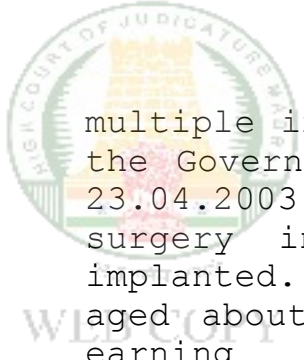
For Respondent : Mr.V.Kannan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Appellant/Transport Corporation against the Judgment and Decree made in M.C.O.P.No.295 of 2004, dated 28.04.2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirunelveli.

2.The respondent/claimant filed a claim petition, claiming an amount of Rs.2,00,000/- towards compensation for the injuries sustained by him in a road accident.

3.It is a case of injury in an accident which took place on 18.04.2003 at about 04.30 p.m., when the appellant/Transport Corporation bus bearing Registration No.TN-32-N-1224, coming from Tirunelveli to Madurai, nearing Virdhunagar main road, wherein the driver of the appellant/Transport Corporation bus drove the vehicle in a rash and negligent manner and as a result of which, the respondent/claimant lost its control and resultantly, the bus capsized on the left side road ditch. In the accident, the respondent/claimant, who was working as a conductor, sustained



multiple injuries all over the body. Immediately, he was taken to the Government Hospital and he was treated as an in-patient from 23.04.2003 to 04.05.2003 and the respondent/claimant had undergone surgery in the left leg and steel plates and screws were implanted. At the time of accident, the respondent/claimant was aged about 44 years and he was working as a conductor and was earning a sum of Rs.4,500/- per month. Hence, the respondent/claimant filed a claim petition in M.C.O.P.No.295 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirunelveli, against the appellant/Transport Corporation.

4.The appellant/Transport Corporation filed counter affidavit and stated that the accident occurred due to the rash and negligent driving of the driver of the Mahendra Marshal Jeep belonging to the State Government and the driver of the appellant/Transport Corporation is no way responsible for the alleged accident and they are not entitled to pay compensation to the respondent/claimant. It is further stated that the claim petition is liable to be dismissed, due to non-joinder of necessary parties viz., owner of the Mahendra Jeep and the Insurance Company and also denied the age, occupation, monthly income and nature of injuries sustained by the respondent/claimant and prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimant, one witness viz., P.W.1 was examined and ten documents viz., Ex.P.1-certified copy of the F.I.R, Ex.P.2-certified copy of observation mahazar, Ex.P.3-certified copy of rough sketch, Ex.P.4-salary certificate, Ex.P.5-discharge summary, Ex.P.6-O.P chit, Ex.P.7-O.P card, Ex.P.8-discharge summary, Ex.P.9-medical bills and Ex.P.10-disability certificate were marked and on the side of the respondent, one witness viz., R.W.1 was examined and no document was marked and one M.O.1-x-ray report series has been marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the learned counsel appearing on either side and also appreciating the evidence on record awarded a sum of Rs.1,99,958/- as compensation.

7.Against which, the appellant/Transport Corporation has filed the present appeal.

8.Heard the learned counsel appearing on both sides and perused the materials available on record.

9.The learned counsel appearing for the appellant/Transport Corporation submitted that the Tribunal failed to see that the accident occurred only due to the rash and negligent driving of the Mahendra Marshal Jeep driver belonging to the Tamil Nadu Government and they were not made party to the proceedings and the



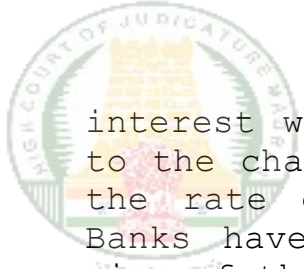
Tamil Nadu Government and the Insurance Company for the said Jeep alone are liable to pay compensation. He has further submitted that the Tribunal erred in awarding a sum of Rs.1,99,958/- as compensation to the respondent/claimant, without any documentary proof and he has also stated that the interest awarded by the Tribunal is very high and prayed to reduce the interest.

10.The learned counsel for the respondent/claimant would submit that based on the available oral and documentary evidences, the Tribunal has rightly come to the conclusion and arrived at correct compensation under various heads and hence, it does not require any interference at the hands of this Court.

11.P.W.1, who is the claimant, would reiterate his stand that as the driver negligently and rashly driven the bus, is the cause for the accident and he sustained fracture in both legs. The driver of the bus, who was examined as R.W.1, had deposed that while nearing the end of Arjuna River bridge, he noticed a jeep coming in the opposite side driven haphazardly on the road and the jeep dashed against the bus and due to the impact, even though tried to avoid collusion, while applying brake skidded from the road and landed on the low lying area. But P.W.1, who is the first respondent/claimant's evidence would show that the driver was responsible and no contra evidence was let in by the driver. P.W.2-Dr.Poovalingam's evidence and the medical bills and documents such as Ex.P.5-discharge summary from 'Susrusha Medical Centre', Ex.P.6-O.P Chit in the Government Hospital, Virudhunagar, Ex.P.7-O.P card, Ex.P.9-Shifa Hospital case history and Ex.P.10-disability certificate, will show the light of the treatment taken by the first respondent/claimant. Due to this accident, 28% of disability was opined by the Doctor as the length of the leg was shortened and difficulties in movement of legs, the opinion given by the Doctor, who treated him, is accepted by this Court.

12.From the perusal of the records, it is seen that the driver of the appellant/Transport Corporation is held responsible for the accident and the Tribunal has awarded a sum of Rs.500/- towards the expenses incurred for taking the injured to the hospital, a sum of Rs.22,560/- (Rs.7,520 X 3) towards loss of income for a period of three months, a sum of Rs.3,000/- towards nourishment, a sum of Rs.1,000/- towards attendant charges, a sum of Rs.1,34,898/- towards medical bills, as per Ex.P.9, a sum of Rs.10,000/- towards pain and sufferings and a sum of Rs.28,000/- towards permanent disability and totally, awarded a sum of Rs.1,99,958/- as compensation to the respondent/claimant and directed the appellant/Transport Corporation to pay the compensation which this Court finds it as just and reasonable.

13.This Court is of the considered view that earlier 12%



interest was found to be reasonable rate of simple interest. Due to the change of economy and policy of the Reserve Bank of India, the rate of interest is reduced and in turn, the Nationalized Banks have reduced the interest rate to the fixed deposits. In view of the above, this Court reduces the rate of interest from 9% to 7.5% on the award amount and the rest of the award amount awarded by the Tribunal is confirmed.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal is confirmed and the rate of interest is modified from 9% to 7.5%, made in M.C.O.P.No.295 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirunelveli. The appellant/Transport Corporation is directed to deposit the award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the respondent/claimant is permitted to withdraw the entire award amount along with accrued interests and costs. No costs.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate ,
Motor Accident Claims Tribunal,
Tirunelveli.

Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.V.KANNAN, Advocate, SR. 83658

C.M.A (MD) No.1322 of 2011
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