

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 23.11.2018

DELIVERED ON 07.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE.R.HEMALATHA

CMA 1231 of 2011

The Managing Director,
Tamilnadu State Transport Corporation Limited
(Coimbatore) Division-I,
37, Mettupalayam Road,
Coimbatore District. Appellant / 1st Respondent

Vs.

1. Nazar ... 1st Respondent / Petitioner

2. M.V.Balakrishnan

3. The Branch Manager,
The Oriental Insurance Company Limited,
Shan Complex, 6/990B,
Bazzar Road,
Mattancherry Cochin,
Karala 682 002. ... 2nd & 3rd Respondents /
2nd & 3rd Respondents.

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 26.07.2010 made in M.C.O.P.No.650 of 2007 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court No.IV, Coimbatore at Tiruppur.

For Appellant : Mr.K.J.Sivakumar

For 1st Respondent : Mr.Ma.Pa.Thangavel

For 2nd & 3rd respondent : No appearance

J U D G M E N T

The Managing Director, Tamilnadu State Transport Corporation Limited (Coimbatore) Division-I, Coimbatore District has filed the present appeal against the order dated 26.07.2010 passed by the Additional District Judge, Motor Accident Claims Tribunal, Thiruppur in M.C.O.P.No.650 of 2007.

2.The first respondent/claimant filed a claim petition in M.C.O.P.No.650 of 2007 before the Additional District Judge, Tiruppur, claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 29.04.2007, when he was travelling in a bus bearing registration No. TN 38 N 1119 belonging to the appellant. According to the claimant, the driver of bus drove the bus rashly and negligently and hit a lorry bearing registration No.TN 28-K-7117, which was coming on the opposite direction, near Samigoundanpalayam on Coimbatore-Trichy Road.

3. The tribunal awarded a compensation of Rs.1,22,300/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the same, the appellant/Tamil Nadu State Transport Corporation Limited has filed the present appeal.

4. Mr.K.J.Sivakumar, learned counsel appearing for the appellant would contend that, when there is a head on collusion between the lorry and the bus, the tribunal should have fixed contributory negligence on the part of the driver of the lorry and that in the instant case, the Tribunal had wrongly exonerated the liability of the owner of the lorry and its insurance company.

5. A perusal of the records shows that the First Information Report in Crime No.281 of 2007 of Palladam Police Station, a copy of which is marked as Ex.A1 was registered against the driver of the appellant bus and after investigation, a final report was also filed against the said driver. The driver of the appellant bus was not examined to show that the driver of the lorry was also responsible for the accident. Absolutely, there is no evidence on the side of the appellant that the driver of the lorry also contributed for the accident. In such circumstances, the tribunal was right in holding that the appellant's driver was rash and negligent in driving the bus.

6. As regards the quantum of compensation, the tribunal has awarded a sum of Rs.1,22,300/- as compensation to the claimant. The contention of the first respondent/claimant is that he was working as a salesman in an electronic shop at Coimbatore earning a sum of Rs.5,000/- per month. Dr.Senthilkumar (PW9) has assessed the partial permanent disability as 30%. The tribunal has considered the medical records and has observed thus.

" In the rulings submitted the first respondent, Madurai Branch of the Madras High Court - It has been held in 2010(1) TLNJ 164 (Civil) - The Divisional Manager, M/s National Insurance Company Limited, .. Karur Vs. Sri Rengan and another ... Respondent ... M.V. Act 1988 - Claims - When there is no total permanent disablement, the tribunal ought not to have awarded the amount by applying multiplier method.

The nature of injuries is such that they would not result in any loss of earning power to the petitioner. His age as on the date of the accident was 27 years, as per the entry contained in Ex.A24. his functional disability is to be fixed at 30%/ By applying the principles laid down by the Madurai Bench of the Madras High Court in a case R.Senthilkumar -- Appellant Vs. P.Palanisamy and others reported in 2007(3) MLJ 518 ... the petitioner is to be awarded with a compensation of Rs.60,000/- at the rate of Rs.2000/- per 1% disability. He is further to be awarded with Rs.20,000/- for pain and sufferings, Rs.3,500/- for nutrition, Rs.1500/- for transport to hospital expenses. The petitioner is further to be awarded a sum of Rs.4,000/- towards loss of income during the treatment period in the hospital, and Rs.1000/- for attendance charges. The petitioner has produced the bills in Ex.A25 series for incurring a total expenses of Rs.32,272/- towards medical expenses during the treatment of the deceased. The petitioners are further to be awarded with rounded off Rs.32,200/- for medical expenses. The claims under other heads are not supported by any document and evidence. Thus, the petitioner is entitled to a total compensation of Rs.1,22,300/- from the first respondent".

7. It is pertinent to point out that the first respondent/claimant did not file any cross objection/appeal against the award passed by the tribunal and the tribunal after considering the various aspects, has awarded a compensation of Rs.1,22,300/- It is based on the legal principles, which were in vogue at that point of time. By any stretch of imagination, the award passed by the tribunal can be said to be on the higher side. Therefore, I find no merit in this appeal and is therefore liable to be dismissed. The appellant is directed to deposit the compensation amount within four weeks from the date of receipt of a copy of this order and on such deposit being made, the claimants are entitled to withdraw the same after following due process of law.

8. In the result, the civil miscellaneous appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mst

To

1 . The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.IV, Coimbatore at Tiruppur.

+1 cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.85027

copy to: The section Officer,
VR Section, High Court,
Madras (2 copies).

CMA.No.1231 of 2011

MR(CO)
SSM(25/01/2019)



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