

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated: 07.06.2018****Coram****The Honourable Mr. Justice S.BASKARAN****Civil Miscellaneous Appeal No.2679 of 2007**

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem Division-2,
Bharathipuram, Dharmapuri. ... Appellant/Respondent

..VS..

B.Parthiban ... Respondent/Petitioner

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 28.02.2007 made in MCOP.No.1008 of 2006 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate No.II, Krishnagiri.

For Appellant : Mr.S.V.Vasanthakumar

For Respondent : Mr.M.Sriram

JUDGMENT

Aggrieved over the finding of the Tribunal, dated 28.02.2007 made in MCOP.No.1008 of 2006 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate No.II, Krishnagiri, the

respondent Transport Corporation filed this present appeal for setting aside the award passed by the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 25.11.2003, while the petitioner was going in the respondent Transport Corporation bus bearing Registration No.TN-29-N-1426, from Krishnagiri to Thirupathur, while going Bargur to Thirupathur Road, at about 12.30 p.m., near Periya Chettipalli Junction Road, due to high speed, the driver of the bus dashed against the private bus bearing Registration No.TN-29-K-3999, which was coming in the opposite direction, due to the impact, the passengers including the petitioner travelling in the bus sustained grievous injuries. The accident took place only due to the rash and negligent driving by the respondent bus driver. The petitioner suffered lacerated injury over right cheek, contusion over right fore head, contusion right shoulder, lacerated injury over right knee and left leg and multiple injuries all over the body. For which he took treatment in Government Hospital, Krishnagiri for one day and thereafter in Government Hospital, Vellore. Subsequently, he under

went treatment in a private hospital Thirupathur and he yet to recover fully. The petitioner suffered permanent disability and he is unable to carry on his normal avocation. The petitioner was earning a sum of Rs.4,000/- per month by working as Tuition Master in the evenings college. Thus, the petitioner is unable to attend to his regular avocation after the accident. Thus, the petitioner sought for a sum of Rs.2 lakhs as compensation from the respondent.

4. On the other hand, opposing the claim petition, the respondent Transport Corporation filing counter contends that the accident does not occur in the manner alleged by the petitioner. The respondent Transport Corporation bus was proceeding at normal speed, while going near Periya Chettipalli Junction Road, the another bus driving by its driver in a rash and negligent manner, came in the opposite direction and dashed against the respondent bus resulting in the accident. The accident occurred only due to the negligent driving by the driver of the another bus, namely, KAKC bus. The claim of the petitioner about the age, avocation and income is not true. The claim of the petitioner is exorbitant. Thus, the respondent-Transport Corporation sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and medical expert was examined as P.W.2 and produced documents Ex.P1 to Ex.P4 to prove his claim. On the side of the respondents, R.W.1 was examined and no document was produced.

6. The Tribunal, on the basis of materials available on record, found the negligence of the respondent Transport Corporation bus alone caused the accident, passed award for a sum of Rs.81,340/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the respondent-Transport Corporation has come forward with this present appeal.

7. Heard the learned counsel appearing for the respondent-Transport Corporation and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant-Transport Corporation contends that the accident occurred only due to the negligence of private bus driver which was coming in the opposite direction. The Tribunal wrongly adopted the multiplier method even though there is no Doctor evidence to prove that the petitioner

suffered functional disability as well as loss of earning power. The Tribunal ought to have deducted 1/3rd amount towards personal expenses. The amount awarded by the Tribunal under the different heads is on the higher side. Thus, the respondent sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the respondent/claimant contended that due to the negligence of the respondent bus driver, the petitioner who was travelling as passenger in the respondent bus suffered grievous injuries and consequently loss of income. As such the Tribunal is correctly concluded and passed the just and fair award which needs no interference. Thus, the respondent/claimant sought for dismissal of this appeal and to confirm the Award passed by the Tribunal.

10. The petitioner, who deposed as P.W.1 clearly stated about the manner in which the accident occurred. According to P.W.1, on 25.11.2003 at about 12.30 p.m., while he was travelling as passenger in the respondent Transport Corporation bus bearing Registration No.TN-29-N-1426, the driver of the bus drove the bus at high speed, in rash and negligent manner and dashed against the private bus

which was coming in the opposite direction. Admittedly, the police have registered Ex.P1 First Information Report against the respondent bus driver only. Even though, the driver of the respondent bus while deposing as R.W.1 stated that KAKC private transport bus alone came at high speed and dashed against the respondent bus. But, there is no supporting materials to prove the same. Assuming what R.W.1 stated true, he would have lodged complaint with the police. The police have registered the First Information Report against the respondent bus driver only. As such, there is no materials on record to show that the negligence of the private bus driver alone caused the accident. Therefore, the Tribunal has correctly concluded on the basis of P.W.1's oral evidence and Ex.P1 First Information Report that the negligence of the respondent bus driver alone caused the accident, the same is just and proper.

11. The petitioner states that he suffered multiple grievous injuries as stated earlier. It is evident from Ex.P2 wound certificate that the petitioner suffered grievous injury. According to the petitioner, at the time of accident, he was employed as a part time tutor in a private institution and earning a sum of Rs.4,000/- per month. However, there is no proof produced by the petitioner about

his avocation and income. As such, the Tribunal fixed the notional income at Rs.2,000/- and as the petitioner was aged 23 years, adopted multiplier 17 and fixed the annual loss of income at Rs.4,08,000/-. The petitioner examined the Doctor as P.W.2. According to him, the petitioner has suffered disability. However, the Doctor P.W.2 has not produced any calculation sheet along his disability certificate. Further, P.W.2 has not treated the petitioner. As such the Tribunal is correctly concluded that 18% disability alone taking into consideration. Accordingly, the loss of income was Rs.73,440/- and the same appears to be just and fair. There is no evidence on record to show that the petitioner was earning income and he has suffered loss of income. As such the conclusion of the Tribunal regarding the monthly earning and the loss of income suffered by the petitioner has perfectly in order. The Tribunal has provided for compensation under different heads, which is not challenged under question by either side. As such, the award of Rs.81,340/- passed by the Tribunal appears to be just and proper considering the nature of injuries suffered by the petitioner/claimant. Thus, there is no ground made out by the respondent Transport Corporation to interfere with the conclusion of the Tribunal and the appeal has to fail and the same is dismissed.

12. In the result, this appeal is dismissed. No costs. The award passed by the Tribunal dated 28.02.2007 made in MCOP.No.1008 of 2006 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate No.II, Krishnagiri, is hereby confirmed. The appellant Transport Corporation is directed to deposit the entire Award amount of Rs.81,340/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

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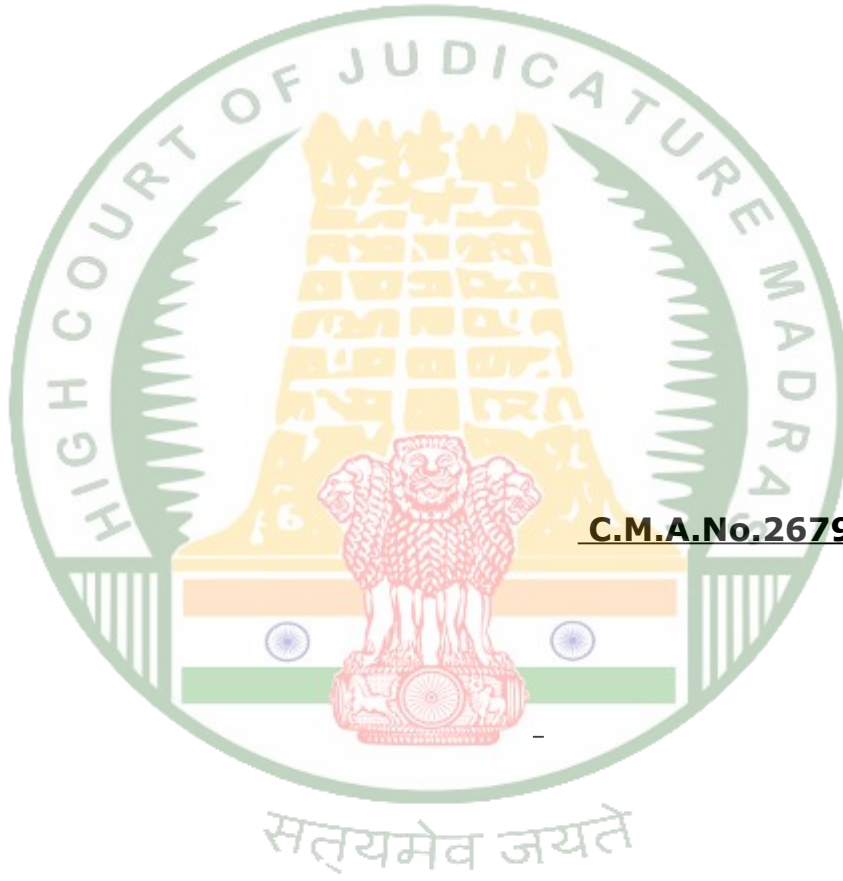
The Chief Judicial Magistrate No.II,
Krishnagiri.

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