

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3751 of 2010

and

M.P.No.1 of 2010

The Managing Director,
Karnataka State Road Transport
Corporation Ltd., Bangalore.Appellant/Respondent

Vs

GundumaniRespondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, is preferred against the Fair order and the Award dated 07.08.2009 made in M.C.O.P.No.484 of 2008 passed by the Motor Accident Claims Tribunal (Additional Special Judge), Krishnagiri.

For Appellant : Mr.K.B.Arul

For Respondent : Mr.Mukund R.Pandiyan

J U D G M E N T

The instant appeal has been filed by the Transport Corporation challenging the Award dated 07.08.2009, passed by the Motor Accident Claims Tribunal (Additional Special Judge), Krishnagiri in M.C.O.P.No.484 of 2008.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The respondent sustained injuries as a result of an accident caused by a bus bearing Registration No.KA-05-D-2013 owned by the Appellant/Transport Corporation. The respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.484 of 2008 seeking a compensation of Rs.15,41,600/- which was restricted to Rs.7,00,000/-.

(ii)The Motor Accident Claims Tribunal by its Award dated 07.08.2009, in M.C.O.P.No.484 of 2008 directed the Appellant/Transport Corporation to pay the respondent a sum of Rs.4,66,707/- together with interest at 7.5% per annum from the date of claim till the date of realization.

3. Aggrieved by the Award dated 07.08.2009, passed in M.C.O.P.No.484 of 2008, the instant appeal has been filed by the Appellant/Transport Corporation.

4. Heard Mr.K.B.Arul, learned counsel for the Appellant and Mr.Mukund R.Pandiyan, learned counsel for the respondent.

5. According to the learned Counsel for the Appellant, the Tribunal has awarded a sum of Rs.4,30,000/- towards loss of earning to the respondent without any basis. According to him, as a result of the accident, the respondent did not suffer 80% disability and further hearing disability will not have any impact on the earning capacity in future. Further, the learned Counsel for the Appellant would contend that without impleading the owner of the van in which the respondent was a driver, the claim against the Appellant alone is not maintainable. He would further contend that there is contributory negligence on the part of the respondent as well as owner of the van.

6. Therefore, according to him, the Tribunal ought not to have accepted the disability certificate produced by the respondent which was marked as Ex.P.9 and ought not to have awarded an excessive compensation of Rs.4,30,000/- to the respondent towards loss of earning capacity.

7. Per contra, the learned Counsel for the respondent would submit that the respondent was a van driver holding heavy vehicle license. According to him, it is an admitted fact that due to the accident the Appellant suffered hearing impairment. As a driver without hearing, it would be difficult for him to continue to work as a driver that too in a commercial vehicle.

8. This Court, after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective Counsels observes the following: सत्यमेव जयते

- a) It is an undisputed fact that the respondent was a van driver having a valid license at the time of the accident.
- b) The respondent has filed a disability certificate disclosing that he had suffered 80% disability to his ear which resulted in loss of hearing. Before the Tribunal the disability certificate was marked as Ex.P.9. No contra evidence has been produced by the Appellant before the Tribunal to disprove the disability certificate filed by the respondent.
- c) The Tribunal has given a categorical finding that the accident happened only due to the rash and negligent driving by the driver of the bus owned by the Appellant.

d) As a commercial vehicle driver, without proper hearing, which is essential for his day to day work, it will be very difficult for him to carry out his work.

9. In the considered view of this Court and considering all these factors, the Tribunal has given the right finding that the respondent is entitled to a sum of Rs.4,30,000/- towards loss of earning.

10. In respect of other heads of the compensation awarded to the respondent under the impugned Award, this Court is also of the considered view that the compensation awarded by the Tribunal under those heads is also a just and reasonable compensation.

11. In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the appeal is dismissed. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.

mtl/bri

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Special Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

2. The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.K.B.Arul, Advocate SR.No.61478

+1cc to Mr.Mukund R.Pandian, Advocate SR.No.61462

NM(CO)

sm:8.10.2018

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