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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.320 of 2016

and

CMP(MD) No.4469 of 2016

Tamil Nadu State Transport Corporation Ltd.,
through its Managing Director,
Bye Pass Road,
Madurai.

... Appellant/Respondent

Vs.

N.Palani

... Respondent/Petitioner

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 22.04.2014, passed in M.C.O.P.No.2048 of 2002 on the file of the Motor Accidents Claims Tribunal, IV Additional Subordinate Court, Madurai.

For Appellant : Mr.P.Prabhakaran
For Respondent : Mr.K.Murugesan

JUDGMENT

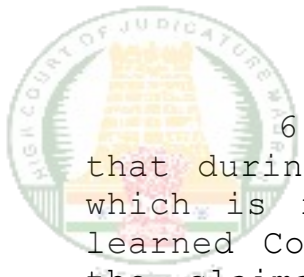
This civil miscellaneous appeal has been filed challenging the award passed by the learned IV Additional Subordinate Judge, Motor Accidents Claims Tribunal, Madurai in M.C.O.P.No.2048 of 2002, dated 22.04.2014.

2. Heard the learned Counsel appearing on either side and perused the records carefully.

3. It is a case of injury and the tribunal has awarded a sum of Rs.20,90,056/- as compensation, against which, the Appellant/Transport Corporation company is before this Court.

4. Though several grounds are raised in the memorandum of grounds, the main grounds on which the appellant Corporation has filed this appeal are on negligence and quantum.

5. The learned Counsel for the appellant submitted that the claimant himself invited the accident and he travelled in the foot board of the bus. If he travelled inside the bus, the victim could have been avoided the accident and therefore, the appellant is not liable to pay compensation to the respondent.



6. The specific averment of the claimant/respondent is that during journey, he stood near the steps from the beginning, which is not been rebutted by the appellant. According to the learned Counsel for the respondent/claimant, even assuming that the claimant was standing in the foot-board, it cannot be a criteria to hold that there is no negligence on the part of the driver or there is a contributory negligence on the part of the claimant. In support of his contention, he would place reliance on the judgment reported in **1999-3-LW-428** in the case of **The Managing Director, Marudhu Pandiyar Transport Corporation, Karaikudi Vs. Rajapandian**, wherein, at paragraph No.21, it is held as follows :

"21. Even assuming that he was standing in the foot-board, that cannot be the criterion to hold that there is no negligence on the part of the driver or there is a contributory negligence on the part of the claimant. According to PW.1, the victim, he was standing in the door-way or near about it. It is a specific case of the PW. 1 that near the bus stop, the driver of the bus, while driving at a high speed, applied the brake and attempted to stop the bus at the bus stop. Due to the sudden brake and jolt, the victim fell down on the ground. If this is accepted, then there is no difficulty in concluding that there is a negligence on the part of the bus driver in applying the sudden brake near the bus stop, even though the bus was driven in a great speed. Even assuming that he was standing in the foot-board, as has been pointed out earlier, even the witnesses examined on behalf of the appellant-Corporation would state that there were many passengers including the claimant, travelling in the foot-board."

On a perusal of the records, it is seen that the tribunal, at paragraph No.7 of the judgment, has elaborately discussed the ground of negligence holding that the driver of the appellant Corporation is the cause for the accident.

7. Insofar as the quantum is concerned, the learned Counsel for the appellant contended that the tribunal has erred in fixing the disability, when no disability certificate was produced from a competent Doctor and moreover, the nature of injuries afflicted by the claimant does not seem to be 100% disability and therefore, the multiplier method adopted by the tribunal is on the higher side.

8. Perusal of records shows that the claimant has clearly deposed that he was admitted in Dr.Inbasekaran's clinic for first



aid and then admitted at Shenbagam Hospital for 1-1/2 months and thereafter, taken treatment at Government Rajaji Hospital. It is observed from Ex.P.5 that the petitioner was terminated from his service as driver for the following reason:

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"Diagnosis "Post traumatic sequelae - Organic Amnesia disorder" Chief of 2nd Neurosurgical service opinion "with this clinical presentation it is certified that the employee is UNFIT to work as a bus driver" We, the Medical board certify that Thiru. Palani, Bus driver is unfit to work as a Bus driver."

On the side of the claimant, though no doctor was examined to assess his disability, it is clearly seen from Ex.P.5, that the petitioner was terminated from his service, in consequence of the accident. The claimant was employed by the appellant transport corporation and worked as driver. His services were terminated by the appellant. Moreover, the tribunal has discussed the same very elaborately in Paragraph No.8, and has rightly assessed the disability at 100%, and I did not find any infirmity over the same.

9. The learned Counsel for the appellant has submitted that as per Sarla verma's case, the correct multiplier is 15, however, the tribunal has taken the multiplier as 16 and therefore, according to the appellant, it deserves interference.

10. Perusal of records show that compensation towards future expenses was fixed at 40%. The Supreme Court, in its latest verdict, in the case of **National Insurance Company Ltd., v. Pranay Sethi and others, decided on 31.10.2017**, has held that 40 to 50% towards future prospectus is reasonable for persons in the age group 40-50. Admittedly, the age of the deceased at the time of the accident was 38 years and therefore, loss towards future prospectus, considering the factors, viz., age; monthly salary; percentage of disability; nature of job, etc., according to this Court, the tribunal ought to have awarded 50% towards future prospectus.

11. It is a simple math that by applying the correct multiplier as 15, as per Sarala Verma and by fixing the future prospectus as 50%, as discussed earlier, the compensation towards loss of earning power will be on the higher side. Since this appeal is filed by the appellant/transport corporation and the claimant has not filed any appeal, this Court is not inclined to entertain this ground raised by the appellant.

12. Though the claim of the claimant is Rs.63,12,000/-, before the tribunal, he restricted his claim to Rs.20,00,000/-, since he



was not able to pay the court fee and therefore, the learned judge has awarded a compensation of Rs.20,90,056/-.

13. The tribunal, having regard to the facts and circumstances of the case and after analyzing the evidences let-in by both the parties, in the interest of justice, has passed the award and therefore, this Court is of the considered view that the grounds on which the present appeal came to be filed lacks merit and this appeal is liable to be dismissed.

14. In the result, this Civil miscellaneous appeal is dismissed. The award passed by the tribunal in M.C.O.P.No.2048 of 2002 dated 22.04.2014, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The IV Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Madurai.

2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.P.Prabhakaran, Advocate Sr.No.62292

+1cc to Mr.K.Murugesan, Advocate Sr.No.62165

RM

VB/SKN/RSK/SAR3/31.05.2018/4P/6C

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