

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.647 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Metropoliatn Transport Corporation Ltd.,
Pallavan Salai, Chennai - 600 002. ... Appellant/Respondent

Vs.

1.C.Venkatesan
2.Kathiravan ... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.02.2013 made in M.C.O.P.No.187 of 2008 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.S.Sivakumar

For R1 : Mr.A.Muthukumar

R2 : Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 22.02.2013 made in M.C.O.P.No.187 of 2008 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the first respondent in M.C.O.P.No.187 of 2008 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. The first respondent filed the said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.07.2006.

3.According to the first respondent, on 29.07.2006 at 12.30 A.M., while he was travelling as a pillion rider in a motorcycle ridden by one B.Balaji on Mambakkam-Medavakkam Road, the driver

of the bus belonging to appellant/Transport Corporation drove the same in a rash and negligent manner and dashed against the motorcycle and caused the accident. Due to the said accident, the first respondent sustained grievous injuries and thus filed claim petition claiming compensation against the appellant/Transport Corporation.

4.The appellant/Transport Corporation filed counter statement and denied all the averments made by the first respondent. According to appellant/Transport Corporation, the first respondent has given statement in the hospital that they fell in a pit and injured and the same has also been stated in the Medical report. Hence, the appellant/Transport Corporation is not liable to pay any compensation to the first respondent/claimant. The first respondent/claimant has made false statement about his avocation and income that he was working as Senior Manager, Quality Assurance in a Private Company and was earning a sum of Rs.30,818/- per month. The first respondent has not suffered any permanent disability and the nature of injuries sustained by him are also simple in nature. The compensation claimed by the first respondent/claimant is highly excessive and he is not entitled to any of the amount as claimed by him and prayed for dismissal of the claim petition.

5.Before the Tribunal, on behalf of the first respondent/claimant, five witnesses were examined as P.W.1 to P.W.5 and 22 documents were marked as Exs.P1 to P22. On behalf of the appellant/Transport Corporation, the second respondent herein/driver of the bus was examined as R.W.1 and no documents were marked.

6.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation and directed the appellant-Transport Corporation to pay a sum of Rs.10,00,000/- as compensation to the first respondent/claimant.

7.Challenging the said award dated 22.02.2013 made in M.C.O.P.No.187 of 2008 granting compensation to the first respondent/claimant, the appellant-Transport Corporation has come out with the present appeal.

8.The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the appellant-Transport Corporation and liability on the appellant-Transport Corporation. The Tribunal failed to consider the evidence of driver of the bus. The Tribunal has awarded

excessive sum of Rs.1,80,000/- as compensation towards permanent disability at the rate of Rs.2,000/- per percentage of disability. The Tribunal also awarded a sum of Rs.1,30,000/- towards loss of earning power, which is excessive. The amounts awarded by the Tribunal under different heads are exorbitant and prayed for setting aside the award passed by the Tribunal.

9.Per contra, Mr.A.Muthukumar, learned counsel appearing for the first respondent/claimant contended that P.W.4/Doctor assessed the permanent disability of the petitioner at 90% for the injuries sustained by the claimant. The Tribunal considering the nature of injuries and disability, rightly awarded a sum of Rs.1,80,000/- as compensation towards partial permanent disability, which is not meager. The amounts awarded by the Tribunal under other heads are just and reasonable and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant-Insurance Company as well as first respondent and perused the entire materials on record.

11.From the award passed by the Tribunal it is seen that the first respondent as P.W.2 and one B.Balaji, who is the rider of the motorcycle as P.W.1 has deposed that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation. No other witnesses was examined on the side of the appellant-Transport Corporation to disprove the contention of P.W.1 and P.W.2. Hence, the Tribunal holds that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation. There is no error in the above finding of the Tribunal, warranting interference by this Court.

12.As far as quantum of compensation is concerned, considering the fracture right distal femur and comminuted fracture right tibia, P.W.4/Dr.M.Saravana Bavanantham has assessed the partial permanent disability of the first respondent at 90%. The Tribunal has awarded a sum of Rs.1,80,000/- towards permanent disability by awarding a sum of Rs.2,000/- per percentage of disability. The accident occurred in the year 2006 and the compensation awarded by the Tribunal by awarding a sum of Rs.2,000/- per percentage towards 90% permanent disability is not excessive. The Tribunal after considering the evidence of P.W.5/co-worker of the first respondent, has awarded a sum of Rs.1,30,000/- towards loss of earning power, which is just and reasonable. The Tribunal after considering the entire materials on record, awarded a total sum of Rs.10,00,000/- as compensation to the first

respondent/claimant, which is just compensation and the same is not excessive. There is no error in the award of the Tribunal warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.10,00,000/- awarded by the Tribunal as compensation to the first respondent/claimant, along with interest and costs is confirmed.The appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.187 of 2008 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the first respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The II Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+1cc to Mr.A.Muthukumar, Advocate Sr.100781
+1cc to Mr.S.Sivakumar, Advocate Sr.101072

C.M.A.No.647 of 2015

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