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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.2423 of 2017

Saravanan

... Appellant/Petitioner

Vs

The Managing Director,

Tamilnadu State Transport Corporation Limited,

Dharmapuri.

... Respondent/ Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to against the judgment and decree dated 28.03.2014 and made in M.A.C.T.O.P.No. 1119/2013 on the file of the Motor Accident Claims Tribunal and Special Sub Court, Thiruvannamalai.

For Petitioner : Mr.F.Terry Chellaraja

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The appeal has been preferred by the claimant aggrieved over the quantum of compensation of Rs.2,35,000/- for the injuries sustained by him in the accident occurred on 23.09.2013, when the claimant, while travelling in a bus belonging to the respondent transport Corporation, fell from the bus accidentally. The Tribunal found that the accident occurred because of rash and negligent driving of the respondent Corporation bus and determined the amount of Rs.2,35,000/- as compensation for the injuries sustained by him. The said award is being challenged before this Court by the claimant.

2. Heard Mr.F.Terry Chellaraja, learned Counsel appearing for the appellant. He would submit that the claimant sustained injuries namely fracture on the left ankle, regarding which PW2/Doctor assessed and fixed the disability at 45%. Instead of awarding compensation by multiplier method, the Tribunal awarded only Rs.2,000/- per percentage and other amounts awarded were also on the lower side. Therefore, he seeks enhancement.



3. On the other hand, Mr.D.Venkatachalam, learned counsel appearing for the respondent would submit that the fall of the claimant from the bus was his own act and not because of the negligence of the driver, as the claimant was under the influence of the alcohol at the time of fall. He would also submit that intoxication of the appellant has been proved by Ex.P2, wound certificate. He would further submit that when that is the position, the Tribunal should not have ordered compensation. In fact, the learned counsel for the respondent argued for setting aside the award.

4. The very occurrence of the accident is admitted. However, the reason for having a fall is contested. According to the appellant, the driver was negligent and started the bus even before the appellant got into the bus and because of the sudden driving of the bus, rashly and negligently with speed, the appellant was thrown out of the bus and he sustained multiple crush injury. No doubt that Ex.P2, wound certificate dated 08.12.2013 issued by the Block Medical Officer, Government Up-graded Primary Health Centre, Bargur, Krishnagiri District, would show that the appellant was under the influence of alcohol, as it has been reported in the said wound certificate that the patient was under the influence of alcohol and though the Tribunal also observed that Ex.P2 would show the intoxication of the claimant, no clinical test was done to come to the conclusion that the claimant was under influence of alcohol. The Tribunal rightly found that even though the appellant was under the influence of alcohol, it is the duty of the driver of the transport Corporation to verify whether all the passengers got into the bus and also the persons who had to get down, then only the driver should have started the bus. Therefore, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the bus as proved by PW1 and Ex.P1 FIR which has been registered against the driver of the bus. Therefore, the Tribunal has rightly found that the accident occurred because of the negligence of the driver irrespective of the claim that the appellant was under the influence of alcohol or not.

5. The Tribunal found that because of the accident, the appellant sustained multiple crush injuries including multiple fracture on his left foot, left ankle, left thigh. He was treated in the hospital for which medical records have been produced. PW2/Doctor determined the disability at 45% for the injuries sustained by the claimant in his left ankle and the fracture which restricted movement of the left ankle and the Tribunal, @ Rs.2,000/- per percentage of disability, awarded Rs.90,000/- towards "Disability".



6. Mr.F.Terry Chellaraja, learned Counsel for the petitioner would argue that multiplier method should have been applied for calculating the compensation. The said contention is liable to be rejected. Though 45% disability has been sustained by the claimant, except restriction in the movement of left ankle, nothing is found. In any event, the expert/Doctor gave opinion that the claimant sustained 45% disability and there was no contra opinion by any other expert and therefore, this Court also confirms 45% disability and therefore, application of multiplier method is unwarranted. Taking into consideration the injuries sustained by the claimant, Rs.90,000/- awarded for disability is confirmed. With regard to other awarded amounts are concerned, Rs.1,00,000/- was awarded towards medical expenses, Rs.20,000/- was awarded towards pain and suffering, Rs.10,000/- was awarded towards transport charges, Rs.5,000/- was awarded towards loss of income during the treatment period, Rs.5,000/- each was awarded towards attendant charges and extra nourishment and totally, a sum of Rs.2,35,000/- was awarded and the same is confirmed. The compensation awarded by the Tribunal is reasonable and it does not require any enhancement. Hence, the appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

sai

To

The Motor Accident Claims Tribunal and Special Sub Court,
Thiruvannamalai.

+1cc to M/s.M.Malar, Advocate SR.No.38770

C.M.A.No.2423 of 2017

MR(CO)
GMY(18/10/2019)