

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1132 of 2012

Thirupathi

..Appellant/Petitioner

Versus

Managing Director,
Tamilnadu State Transport Corporation Ltd.
Salem Division -II,
Bharathipuram
Salem Main Road, Dharmapuri,
Dharmapuri District

..Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 22.12.2011 made in M.C.O.P.No.466 of 2009 on the file of the Motor Accident Claims Tribunal, (Additional Special Court), Krishnagiri.

For Appellant : Mr.P. Mani

For Respondent : Mr.D. Venkatachalam

J U D G M E N T

This appeal has been preferred by the claimant against the Judgment and decree in M.C.O.P.No.466 of 2009 dated 22.12.2011 passed by the Motor Accident Claims Tribunal, (Additional Special Court), Krishnagiri, questioning the contributory negligence on the part of petitioner/claimant and seeking for enhancement of compensation.

2. The appellant herein was the petitioner/claimant who is the injured person and the respondent herein was the respondent who is the State Transport Corporation before the Tribunal. For the convenience, the parties are referred to in the same ranking as before the Tribunal.

3. The facts of the case briefly are as under:

On 20.08.2008 at about 9.00am when the petitioner/appellant herein was driving Motorcycle bearing registration No. TN 29 B 1908 along with his wife Lakshmi and daughter Sugantha Priya as Pillion riders in the road

connecting Mangalpatti _ Mangalpatti Junction Road, the driver of the state-owned bus bearing registration No.TN 29 N 1351 driving the same in a rash and negligent manner in the opposite direction, dashed against the Motorcycle of the petitioner/appellant herein. As a result of which, the petitioner/appellant herein sustained grievous injury on his right leg and simple injuries on his right upper end of leg and right wrist. The wife and child of the petitioner were also sustained injuries in the accident. The petitioner was admitted in the Government H.Q. Hospital, Krishnagiri and was treated as inpatient there for few days. Thereafter, the petitioner got discharged himself from there and taken treatment in the private hospital till filing the claim petition before the Tribunal. With regard to the accident, the Pochampalli Police have registered the case in Cr. No.285 of 2008 under Sections 279, 337 and 338 of I.P.C. In view of the accident, the petitioner has filed the claim petition in M.C.O.P. No.466 of 2009 on the file of the Motor Accident Claims Tribunal (Additional Special Court), Krishnagiri District seeking for compensation of Rs.5,00,000/- for injuries sustained in the accident under M.V. Act by and which the petitioner was awarded a sum of Rs.48,000/- (Rupees Forty Eight Only) as compensation directing the Transport corporation/respondent herein to pay the amount of compensation in the terms of contributory negligence at 60% fixing on the part of the petitioner/appellant herein and Transport Corporation/respondent herein.

4. Being aggrieved by the award, the petitioner/appellant herein has filed the present appeal challenging the award passed by the Tribunal.

5.The learned counsel for the appellant would submit that the Tribunal has erred in fixing the liability at 60% on the side of the petitioner/appellant herein as contributory negligence for the cause of accident without considering the injuries sustained by the petitioner and the Ex.P1, F.I.R. which was registered against the driver of the state-owned bus. Further, the Tribunal has passed an award having taken into consideration of the averment of R.W.1, driver of the bus wherein it was stated that the bus driver stopped the bus, while the petitioner driving the motorcycle on the opposite direction talking to his wife at the back side, however, the petitioner scrapped against the right side rear wheel of the bus and fell out of it. As the aforesaid statement made by the driver of the bus is false, frivolous and vexatious, the Tribunal ought to have avoided in fixing liability on the petitioner as contributory negligence. Hence, the award passed by the Tribunal is not sustainable and it deserves to be set aside by this Court. It is further submitted by the learned counsel that the Tribunal has not awarded any amount for Extra-nourishment and Transport expenses to the

petitioner. Hence, this Court may be pleased to award for the aforesaid head.

6. The learned counsel for the respondent/Transport Corporation would submit that there is no infirmity in the award and both the petitioner and driver of the bus were correctly held as responsible for the accident. The Tribunal has rightly awarded after taking into consideration entire oral and documentary evidence placed before it that the petitioner was negligently riding his motorcycle speaking to his wife who was riding as pillion rider in the same two wheeler and dashed against the State-owned bus due to which the Tribunal was correct in fixing contributory negligence @60% on the side of the petitioner. Hence, there is no need to interfere with the award passed by the Tribunal.

7. Heard, the learned counsel for both sides and perused the materials available on record.

8. During the trial, on the side of the petitioner, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.5 were marked. On the respondent side/Transport Corporation, R.W.1 was examined and no exhibit was marked.

9. On perusal of the award, it is seen that the Tribunal has fixed the liability in the ratio 60:40 wherein the petitioner has been fixed much liability at 60% while the Transport corporation has been fixed at 40% after considering the averment made by the R.W.1, driver of the Transport Corporation. It is to be noted that on the 14 feet road, the driver of the bus should exercise his duty in driving the Public Transport vehicle with more careful and cautious manner and when the petitioner was carrying his wife and daughter in the motorcycle, he has to drive motorcycle in careful and cautious manner by observing traffic rules and regulation. In the event of both the parties are liable for the accident, the ratio of composite negligence has to be fixed in accordance with the law.

10. It is admitted fact that first of all, the accident has not occurred in head-on collusion and it is stated that the petitioner dashed against the right side rear wheel of the state-owned-bus in the turning point. Under this circumstances, it cannot be said that which vehicle has moved forward to turn at the point of the Mangalpatti Junction. In this regard, sketch prepared at the place of the accident was not produced by either side to confirm by whom the accident was occurred. Anyhow, in the aforesaid accident, the petitioner sustained grievous injuries and suffered fracture in the right leg and was treated in the Government and private hospital for the injuries and fractures and the claim petition was filed by the petitioner/appellant herein against

the respondent/driver of the bus in accordance with F.I.R. filed against the respondent. As the case may be, it cannot be considered that the petitioner was driving in a rash and negligent manner thereby the accident was occurred by solely accepting the statement of the R.W.1 before the Tribunal and it is not acceptable to be stated by the R.W.1 that the bus was stopped after seeing the petitioner who was talking to her wife turning behind in the bike. In the event of the accident, an F.I.R. was registered against the bus driver as tort-feasor, the averment of the R.W.1/driver of the state-owned-bus could not be acceptable. Further, the drivers of the State-owned bus should be more responsibility and more vigilance, since they are driving heavy vehicle on the arterial road, to save the general public lives travelling therein and travelling on the road. At the same time, there is no contrary evidence against the F.I.R. which was registered against the driver of the bus to refute the statement of P.W.1. However, it cannot refuse the negligence on the part of the petitioner in the aforesaid accident. The petitioner while taking his wife and child in the motorcycle should drive in a careful and cautious manner taking into consideration interest of the family. Having regard to the aforesaid observation, this Court is of the considered view that the tribunal was not justified in fastening the much liability on the side of the petitioner at 60% and 40% on the side of the respondent/transport Corporation. Therefore, having considered facts and circumstances of the case and the aforesaid observation, this Court has fixed the liability in the ratio 70:30, ie. 70% negligence on the part of the driver of the Bus and 30% negligence on the part of the petitioner/appellant herein.

11. As stated by the learned counsel for the appellant, even though the petitioner was under treatment for nearly 6 months, no amount has been awarded by the Tribunal towards compensation for extra nourishment and transport expenses. Awarding a sum of Rs.5,000/- towards extra nourishment and a sum of Rs.3,000/- towards transport expenses shall be quite reasonable and other heads awarded by the Tribunal is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified by changing ratio on the composite negligence and increasing the total award amount of compensation from Rs.1,20,000/- to Rs.1,28,000/- in which 70% of the award amount shall be borne by the transport corporation/respondent herein and the balance 30% of the award amount shall be borne by the petitioner/appellant herein. The respondent/Transport Corporation is hereby directed to pay the 70% of award amount of Rs.89,600/- together with interest @ 9% p.a. from the date of petition till the date of realization excluding default period if any, to the credit of M.C.O.P. No.466 of 2009 on the file of the Motor Accident Claims Tribunal, (Additional Special Court) Krishnagiri District within a period of three

weeks from the date of receipt of copy of the Judgement. On such deposit, the petitioner/appellant herein is permitted to withdraw the compensation amount after filing a formal petition before the concerned Tribunal.

12. In the result, the appeal is allowed in part and the award passed by the Tribunal in M.C.O.P. No.466 of 2009 is modified accordingly. There shall be no order as to costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

lbm

To

1.Motor Accident Claims Tribunal,
(Additional Special Court), Krishnagiri.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.D.Venkatachalam, Advocate SR.12480

+1cc to Mr.P.Mani, Advocate SR.11860

C.M.A.No.1132 of 2012

AK(CO)
CB(22/01/2021)

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