

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2284 of 2011

and

M.P.No.1 of 2011

The Managing Director,
State Transport Corporation Ltd.,
Chennai. Appellant/Respondent

Vs.

Jayakumar Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.02.2008 made in M.C.O.P.No.182 of 2007 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court at Vellore.

For Appellant : Mr.S.V.Vasantha Kumar

For Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the State Transport Corporation, challenging the judgment and decree passed by the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore, in M.C.O.P.No.182 of 2007 dated 25.02.2008.

2.It is the case of the claimant/respondent herein before the Tribunal that the claimant, while travelling as a pillion rider in a two wheeler bearing Registration No.TN-23-E-1255, the Motorcycle was hit by a bus coming from the opposite direction, which was driven by its driver in a rash and negligent manner. Due to the said impact, the rider of the two wheeler died on the spot. The respondent herein sustained severe head injury, fracture injury on left leg and multiple injuries all over the body and took treatment in C.M.C.Hospital.

3.Claiming that the accident had happened only due to the rash and negligent driving by the driver of the bus, the claimant has filed a claim petition under Section 166 of Motor Vehicle Act, claiming a sum of Rs.15,00,000/-.

4.After contest, the Tribunal only fastened the liability on the Transport Corporation by placing reliance on the documents produced by the claimant and ultimately, the Tribunal awarded a sum of Rs.7,51,000/- with interest at 6% from the date of petition till the date of deposit. Aggrieved over the same, this appeal is preferred by the appellant/ Transport Corporation.

5.The learned counsel for the appellant would submit that the Court below has wrongly fastened the liability on the appellant, since the claimant was travelling as a pillion rider in the two wheeler with his friend, which was driven by his friend/deceased in a rash and negligent manner. The Tribunal failed to consider that there was no Accident Register or any Motor Vehicle Report filed by the claimant to prove the manner of accident against this corporation and awarding a sum of Rs.7,51,000/- is on the higher side, which is under considerable reduction.

6.Heard the learned counsel for the appellant corporation. Though notice being served on the respondent and his name printed in the cause list, there is no appearance on behalf of the respondent. Considering the paucity of time, this appeal is being taken up for final disposal on merits.

7.Before the Tribunal, the claimant/respondent has marked P.W.1 and P.W.2. Contrary to that, no oral or documentary evidences are adduced by the appellant to prove the manner of the accident or the nexus between the accident and the injuries sustained by the claimant. The best evidence, that is the driver of the Transport Corporation has not been examined before the Tribunal. Further, before the Tribunal, the respondent herein has marked Ex.P1/FIR, Ex.P4/discharge summary to prove the time and manner of accident, which was not controverted by any of the documents by the appellant herein and also P.W.1 was examined to speak about the manner of the accident.

8.Apart from the above, Ex.P2, Ex.P3, Ex.P5 and Ex.P6 have been filed by the respondent before the Tribunal along with the evidence of P.W.2 Doctor to prove the disability suffered by the claimant during the accident. The Doctor has fixed the disability as 65% and the Tribunal has taken the same as 65% and awarded a sum of Rs.65,000/- on that count.

9.Considering the nature of injuries sustained by the claimant the Tribunal has awarded a sum of Rs.2,00,000/- towards pain and sufferings. Based on the medical bills, a sum of Rs.81,000/- has been awarded and a sum of Rs.5,000/- has been awarded towards Transportation. Towards loss of income, the Tribunal has awarded a sum of Rs.4,00,000/-.

10.This Court is of the view that to advert documents and evidence perused on the side of the respondent and no evidence or documents forthcoming on the side of the appellant. In such view of the manner conducted by the appellant/insurance company to fasten the liability on the appellant is incorrect and the award needs reduction. The contention raised by the appellant has no legs to stand in such view of the matter. Hence, this Court is of the opinion that this petition is devoid of merits and the award of the Tribunal is confirmed. The amount awarded by the Tribunal is extracted hereunder:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	4,00,000/-	4,00,000/-	confirmed
2.	Pain and sufferings	2,00,000/-	2,00,000/-	confirmed
3.	Permanent Disability	65,000/-	65,000/-	confirmed
4.	Medical Expenses	81,000/-	81,000/-	enhanced
5.	Transportation	5,000/-	5,000/-	confirmed
	Total	Rs.7,51,000/-	Rs.7,51,000/-	confirmed

11. With the above observations, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court,
Vellore.

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

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