

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2470 of 2013
and
M.P.No.1 of 2013

The Managing Director
State Express Transport Corporation Ltd.
Pallavan House, Anna salai
(Exports Division)
Chennai-600 002.

.. Appellant/
Respondent

Vs.

Balachandran

.. Respondent/
Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.02.2013 made in M.C.O.P.No.304 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellant : Mr.K.J.Sivakumar
For Respondent : No appearance

J U D G M E N T

The matter is heard through Video-Conferencing.

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award dated 01.02.2013 made in M.C.O.P.No.304 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.304 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore. The respondent filed the said claim petition claiming a sum of Rs.29,26,000/- as compensation for the injuries sustained by him in the accident that took place on 20.10.2004.

3. According to the respondent, on the date of accident i.e., on 20.10.2004 at about 24.00 hours, while the respondent was returning to Chidambaram from Bhuvanagiri in his Maruti car, the driver of the bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner, dashed against the respondent and caused the accident. In the accident, the respondent sustained grievous injuries and multiple fractures and therefore, filed the above claim petition seeking compensation against the appellant.

4. The appellant filed counter statement denying the averments made by the respondent and contended that the driver of the bus is not responsible for the accident. While the driver of the bus belonging to the appellant/Transport Corporation was driving the bus at a moderate speed from Mayiladuthurai to Pondicherry, the respondent drove the Maruti car in the opposite direction in a rash and negligent manner and dashed against the right side of the bus. On seeing this, the driver of the bus to avoid major accident turned to the left side and stopped the bus. The accident has occurred solely due to rash and negligent driving by the respondent, the driver of the Maruti car. The owner and insurer of the car were not made as parties to the claim petition. Hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the appellant is not liable to pay any compensation to the respondent. The appellant has also denied the age, injuries, avocation and income of the respondent. In any event, the total compensation claimed by the respondent is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the respondent examined himself as P.W.1, Dr. Vijay Anand Thambaiya, was examined as P.W.2, one Rajendran, employee of the respondent, was examined as P.W.3 and marked 18 documents as Exs. P1 to P18. The appellant/Transport Corporation did not let in any oral and documentary evidence.

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.11,09,500/- as compensation to the respondent.

7. Against the said award dated 01.02.2013 made in M.C.O.P.No.304 of 2005, granting compensation to the respondent, 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 failed to see that the

driver of the bus drove the bus at moderate speed and the 1st respondent without seeing oncoming bus, drove his car at high speed, dashed against the right side of the bus and caused the accident. The Tribunal failed to consider the averments made in the counter statement filed by the appellant. The Tribunal failed to consider that owner and Insurance Company of the car were not impleaded as parties. The amount granted by the Tribunal for disability by adopting multiplier method is on the higher side. The amounts awarded by the Tribunal towards medical expenses without any prescription and pain and suffering are also on the higher side. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

9. Though notice has been served on the respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

10. Heard the learned counsel appearing for the appellant/Transport Corporation and perused all the materials available on record.

11. From the materials available on record, it is seen that it is the contention of the respondent that driver of the bus drove the same in a rash and negligent manner, dashed against the car driven by the respondent and caused the accident. In the accident, the respondent sustained multiple grievous injuries. To substantiate this contention, the respondent examined himself as P.W.1 and deposed about the manner of the accident. The respondent marked F.I.R. as Ex.P1, which was registered against the driver of the bus belonging to the appellant/Transport Corporation and Motor Vehicle Inspector's Report as Ex.P2. The appellant has not examined the driver of the bus or has not let in any contra evidence to disprove the evidence of the respondent. The Tribunal considering the evidence of P.W.1, F.I.R. and Motor Vehicle Inspector's Report held that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the appellant. There is no error in the said finding of the Tribunal warranting interference by this Court.

12. As far as quantum of compensation is concerned, the respondent has examined an Orthopedic Doctor as P.W.2, who deposed the nature of injuries and disability suffered by the respondent. Considering the medical report and clinically examining the respondent, P.W.2/Doctor certified that the respondent suffered 90% disability. The Tribunal considering the judgment of the Hon'ble Apex Court reported in 2011 (1) MLJ 779 (Rajkumar v. Ajay Kumar), has taken 1/3rd disability for whole body and fixed 30% disability for the whole body. The

respondent filed Exs.P13 and P17/Income Tax returns. The respondent has declared his income as Rs.1,82,466/- for the year 2003-2004. The Tribunal taking into consideration Ex.P13/Income Tax return fixed monthly income of the respondent as Rs.15,000/-. The respondent was aged 26 years at the time of accident. The Tribunal taking into consideration the judgment of the Hon'ble Apex Court reported in 2009 (6) SCC 121 (Sarla Verma and others vs. Delhi Transport Corporation and another), applied multiplier '17' and considering the evidence of P.W.2/Doctor and nature of injuries, adopted multiplier method and awarded compensation towards disability. In addition to that, the Tribunal considering Ex.P12/medical bill series, awarded a sum of Rs.1,66,500/- towards medical expenses and Rs.20,000/- towards pain and suffering. The total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.11,09,500/- awarded by the Tribunal as compensation to the respondent, along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the entire amount awarded by the Tribunal 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. On such deposit, the respondent is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge
(Motor Accident Claims Tribunal),
Cuddalore.
2. The Section Officer,
VR Section, High Court, Chennai.

C.M.A.No.2470 of 2013
and M.P.No.1 of 2013

VBA(CO)
CS/07/05/2021