



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3173 of 2013

and

M.P.No.1 of 2013

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Division I, No.37
Mettupalayam road
Coimbatore.

... Appellant/Respondent

Vs.

Jayapaul

... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.01.2013 made in M.C.O.P.No.589 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruppur.

For Appellant : Mr.A.Sundaravadhanan

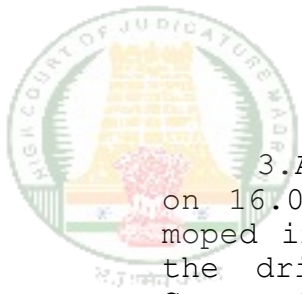
For Respondent : Mr.M.Lokesh
for Mr.MA.P.Thangavel

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 05.01.2013 made in M.C.O.P.No.589 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruppur.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.589 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruppur. The respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.02.2011.



3. According to the respondent, on the date of accident i.e., on 16.02.2011 at about 9.15 a.m., while he was riding in his moped in Coimbatore to Erode Main Road, near Kaniyur bus stand, the driver of the bus belonging to the appellant/Transport Corporation, which came from West to East direction, drove the same in a rash and negligent manner, dashed against the respondent and caused the accident. In the accident, the respondent sustained multiple injuries and therefore, filed the claim petition seeking compensation against the appellant.

4. The appellant filed counter statement denying the averments made by the respondent and contended that the respondent rode the moped in a rash and negligent manner, dashed on the bus and invited the accident. The accident did not occur due to negligence on the part of the driver of the bus belonging to the appellant. Therefore, the appellant is not liable to pay any compensation to the respondent. The driver of the bus, owner and insurer of the moped were not made as parties to the claim petition. Hence, the claim petition is bad for non-joinder of necessary parties. The appellant has also denied the age, 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 and P.W.2 as father of the claimant in M.C.O.P.No.590 of 2011, Dr.P.Senthilkumar as P.W.3 and one Narasimmamoorthy, employer of the respondent as P.W.4 and marked 11 documents as Exs.P1 to P11. On the side of the appellant, one M.Kannan, driver of the appellant bus was examined as R.W.1 and no documentary evidence was let in.

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.8,95,803/- as compensation to the respondent.

7. Against the said award dated 05.01.2013 made in M.C.O.P.No.589 of 2011, granting compensation to the respondent, the appellant/Transport Corporation has come out with the present appeal.

8. Though the learned counsel appearing for the appellant/Transport Corporation has raised various grounds with regard to negligence in the grounds of appeal, at the time of arguments, he has restricted his arguments only with regard to quantum of compensation awarded by the Tribunal to the respondent.



9.The learned counsel appearing for the appellant/Transport Corporation contended that the respondent has not suffered any functional disability and lost his earning capacity. The respondent has not proved that he lost his earning capacity. In the absence of any evidence with regard to loss of earning capacity, the Tribunal erred in adopting multiplier method to award compensation towards disability and prayed for reducing the compensation awarded by the Tribunal.

10.The learned counsel appearing for the respondent made his submissions in support of the award passed by the Tribunal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the entire materials available on record.

12.It is the contention of the respondent that while he was riding the moped along with his minor daughter, the driver of the bus belonging to the appellant, drove the bus in a rash and negligent manner and dashed against the moped driven by the respondent. The respondent sustained injuries on his head, face, eyes, fracture in his right leg and underwent surgery. He took treatment as in-patient in Kovai Medical Centre and Hospital from 16.02.2011 to 12.03.2011. To prove the same, he filed documents and examined P.W.3/Doctor, who deposed about the nature of injuries, treatment taken by the respondent and certified that the respondent suffered 60.8% disability. The Tribunal considering the fact that the accident has occurred in the year 2011 and the disability certificate was issued in the year 2012, reduced the percentage of disability to 58%. The respondent has stated that he was working as a welding fitter in Airtex Engineering Company and due to the injuries, he could not continue his work as welder. The respondent examined P.W.4, the owner of the company, where he worked as welder. P.W.4 deposed that the respondent was employed as welder and was paid a sum of Rs.12,000/- as salary. Ex.P11/salary certificate was produced to prove the same. P.W.4 further deposed that after the accident, the respondent did not attend the work. The Tribunal considering the nature of work carried on by the respondent, the nature of injuries, disability, evidence of P.W.3/Doctor and P.W.4/employer of the respondent, adopted multiplier method and awarded compensation towards disability. The appellant has not let in any evidence to disprove the evidence of P.W.3/Doctor and P.W.4/employer of the respondent. The Tribunal has given valid reason for adopting multiplier method. In view of the same, the compensation awarded by the Tribunal is not interfered with.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.8,95,803/- 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. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kj
To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Tiruppur.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

C.M.A.No.3173 of 2013
and M.P.No.1 of 2013

vsn II[co]
srg 27/08/2021