

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.742 of 2013

The Managing Director,  
Andhrapradesh State Road Transport Corporation,  
Hyderabad. ... Appellant

Vs.

A.Shagul ... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.07.2012 made in M.C.O.P.No.577 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Special Judge (FAC), Krishnagiri.

For Appellant : Ms.C.V.Shoba

For Respondent : Mr.K.Prasanna  
for Mr.Mukund R.Pandiyan

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 05.07.2012 made in M.C.O.P.No.577 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Special Judge (FAC), Krishnagiri.

3.The appellant is the respondent in M.C.O.P.No.577 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Special Judge (FAC), Krishnagiri. The respondent filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.09.2005.

4.According to the respondent, on 25.09.2005 at about 09.15 A.M., while he was walking on the left side of the Krishnagiri - Dharmapuri N.H.Road near overhead bridge side to Devasamuthiram road side, the driver of the bus belonging to appellant-Transport Corporation drove the same in a rash and negligent

manner and dashed against the respondent and caused the accident. In the accident, the respondent sustained multiple grievous injuries all over his body. Therefore, the respondent filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him against the appellant-Transport Corporation.

5.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondent. According to the appellant, the driver of the bus drove the same cautiously with sounding horn on the extreme left side of the road and the respondent only suddenly without hearing the horn sound, started to cross the road. On seeing the negligent act of the respondent, the driver of the bus applied sudden brake to avoid hitting on the respondent. Before the bus could come to halt, the respondent came and had contact with the bus and invited the accident. Hence, the accident has occurred only due to negligence on the part of the respondent. Therefore, the appellant is not liable to pay any compensation to the respondent. The injuries sustained by the respondent are only simple in nature. The respondent has to prove his age, avocation, income, nature of injuries, period of treatment taken and disability by producing valid documents. In any event, the quantum of compensation claimed by the respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the respondent examined himself as P.W.1 and Dr.Devendiran was examined as P.W.2 and 8 documents were marked as Exs.A1 to A8. The appellant-Transport Corporation examined one Gangul Reddy as R.W.1 but did not mark any documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant-Transport Corporation to pay a sum of Rs.6,67,890/- as compensation to the respondent.

8.Against the said award dated 05.07.2012 made in M.C.O.P.No.577 of 2009, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in holding that driver of the bus belonging to appellant was responsible for the accident contrary the evidence let in by the appellant, who deposed that when the respondent suddenly tried to cross the road in a negligent manner, accident occurred. The Tribunal fixed negligence on the part of the driver of the bus solely based on Ex.A1/F.I.R.,

which was registered based on the complaint given by the respondent, in the absence of any independent eyewitness examined on behalf of the respondent. The respondent has not let in any rebuttal evidence to the contention of R.W.1. The learned counsel appearing for the appellant further submitted that the respondent suffered only simple injuries and he has not suffered any permanent disability. The respondent has not produced any records to show that he has taken continuous treatment. P.W.2/Doctor in his cross examination admitted that he is not an expert in Plastic Surgery and in micro vascular operation. The assessment of disability by P.W.2/Doctor is excessive. The respondent was a minor aged 14 years studying 9<sup>th</sup> standard and was a non-earning member at the time of accident. The Tribunal erroneously fixed a sum of Rs.4,500/- per month as notional income of the respondent though the respondent has claimed that he was earning a sum of Rs.3,000/- per month by helping his mother in doing Agarpathi Business. The Tribunal without any basis awarded a sum of Rs.1,00,000/- each towards marital prospects and mental agony. The amount awarded by the Tribunal towards pain and sufferings at Rs.20,000/- is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.Per contra, the learned counsel appearing for the respondent contended that the accident has occurred only due to rash and negligent driving by the driver of the appellant. The respondent has examined himself as P.W.1 and deposed to that effect and marked F.I.R., which was registered against the driver of the bus as Ex.A1. The Tribunal considering the evidence of P.W.1, Ex.A1/F.I.R. and in the absence of any contra evidence, did not accept the evidence of R.W.1 and fixed negligence on the part of the driver of the bus belonging to appellant. There is no error in the finding of the Tribunal fixing negligence on the part of the driver of the bus. In the accident, the respondent sustained severe injuries and he has taken treatment as inpatient from 25.09.2005 to 05.12.2005 for more than 2 ½ months. The respondent has proved the nature of injuries and disability by examining P.W.2/Doctor. The Tribunal considering the evidence let in by the respondent as P.W.1, P.W.2/Doctor, fixed monthly income and awarded compensation under different heads which are not excessive warranting interference by this Court and prayed for dismissal of the appeal.

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

12.It is the contention of the respondent that the driver of the bus belonging to appellant drove the bus in a rash and negligent manner, dashed against the respondent and caused the accident. In the accident, the respondent sustained grievous injuries and filed claim petition claiming compensation for the injuries and disability suffered in the accident. To prove this case, the respondent examined himself as P.W.1 and marked F.I.R. as Ex.A1, which was registered against the driver of the bus. On the other hand, it is the contention of the appellant that accident has occurred only when the respondent suddenly tried to cross the road and invited the accident. To substantiate this contention, the appellant examined the driver of the bus as R.W.1. From the materials on record, it is seen that the appellant or driver of the bus has not given any complaint to the Police against the respondent alleging negligence on the part of the respondent or filed any objection to the F.I.R., which was registered against R.W.1, driver of the bus. The Tribunal considering the materials placed before it has held that accident has occurred only due to rash and negligent driving by the driver of the bus as no concrete evidence was produced by the appellant to substantiate their contention. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the respondent was aged 14 years at the time of accident and was studying 9<sup>th</sup> standard at the time of accident. It is the contention of the respondent that he was helping his mother in manufacturing Agarpathi and was earning a sum of Rs.3,000/- per month. The Tribunal fixed notional income of the respondent at Rs.4,500/- per month and the same is excessive. As per the II Schedule, the income of a non-earning member is fixed at Rs.15,000/- per annum. Considering the passage of time and increase in cost of living, the Hon'ble Apex Court has fixed a sum of Rs.30,000/- as annual income of a non-earning member. This Court considering the judgment of the Hon'ble Apex Court, fixed a sum of Rs.45,000/- as annual income of a non-earning member in certain cases. Considering the claim of the respondent that he was earning a sum of Rs.3,000/- per month at the time of accident by helping his mother in manufacturing Agarpathi, the same is fixed as monthly income of the respondent. P.W.2/Doctor has deposed about the nature of injuries, treatment taken and percentage of disability suffered by the respondent. The appellant has not let in any contra evidence to the evidence of P.W.2/Doctor. Considering the evidence of P.W.2/Doctor, nature of injuries and percentage of disability, the Tribunal has awarded compensation by adopting multiplier method and the same is proper. The compensation awarded by the Tribunal towards disability is modified to Rs.2,16,000/- (Rs.3,000/- X 12 X 15 X

40/100). The contention of the learned counsel appearing for the appellant that Tribunal awarded a sum of Rs.1,00,000/- towards mental agony without any basis is concerned, the respondent has taken treatment as inpatient from 25.09.2005 to 05.12.2005. The Tribunal has not awarded any amount towards attendant charges, loss of amenities, transportation, damages to clothes. The compensation awarded by the Tribunal towards extra nourishment is meagre. In view of the same, the amount awarded by the Tribunal towards mental agony is not interfered with. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S. No | Description               | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|---------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability                | 3,24,000/-                      | 2,16,000/-                        | Reduced                                |
| 2.    | Pain and sufferings       | 20,000/-                        | 20,000/-                          | Confirmed                              |
| 3.    | Medical bills             | 1,17,890/-                      | 1,17,890/-                        | Confirmed                              |
| 4.    | Loss of marital prospects | 1,00,000/-                      | 1,00,000/-                        | Confirmed                              |
| 5.    | Mental agony              | 1,00,000/-                      | 1,00,000/-                        | Confirmed                              |
| 6.    | Extra nourishment         | 6,000/-                         | 6,000/-                           | Confirmed                              |
|       | Total                     | Rs.6,67,890/-                   | Rs.5,59,890/-                     | Reduced by Rs.1,08,000/-               |

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,67,890/- is hereby reduced to Rs.5,59,890/- together with interest and costs from the date of petition till the date of deposit. The appellant-Transport Corporation is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.577 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Special Judge (FAC), Krishnagiri. On such deposit, the respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-

Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.577 of 2009, if the entire amount has already been deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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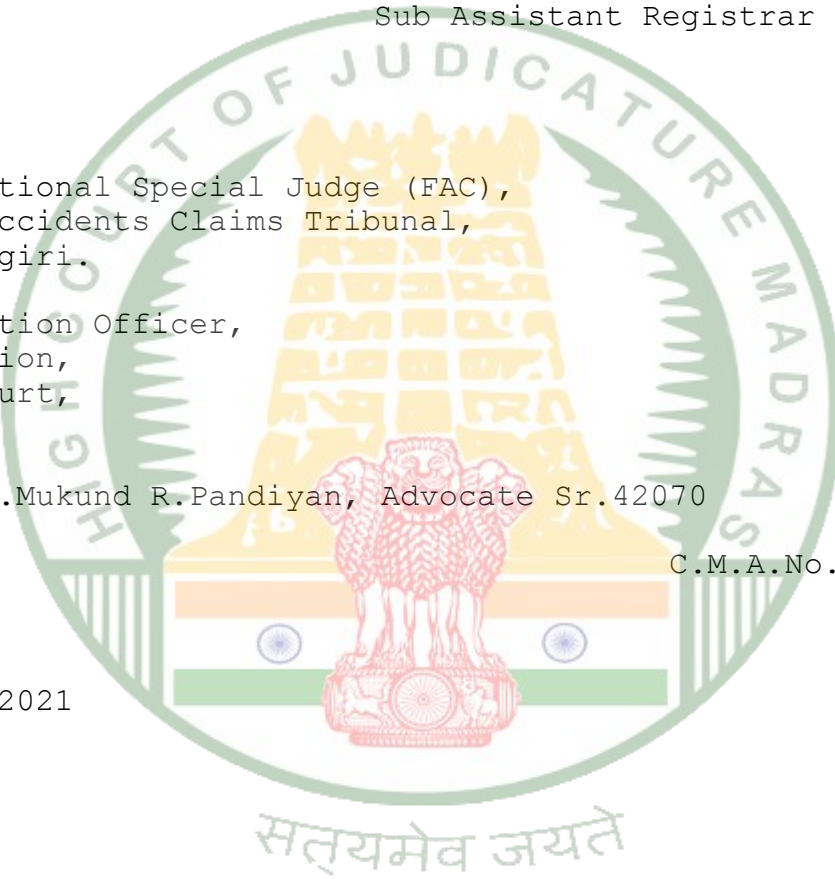
1.The Additional Special Judge (FAC),  
Motor Accidents Claims Tribunal,  
Krishnagiri.

2.The Section Officer,  
VR Section,  
High Court,  
Madras.

+1cc to Mr.Mukund R.Pandiyan, Advocate Sr.42070

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