

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.1143 of 2020

And

C.M.P.No.7241 of 2020

The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Regional Office,
Bharathipuram,
Dharmapuri. ...Appellant/Respondent

vs.

K.Mahendiran ...Respondent/Petitioner
S/o.Kulandai @ Kutti

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2019 passed in M.C.O.P. No.7 of 2018 on the file of the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Uthangarai.

For Appellant : Mr.D.Gopal for Mr.D.Raghu

For Respondent : Mr.S.P.Yuvaraj

J U D G M E N T

The appellant-Tamil Nadu State Transport Corporation (Salem) Limited has preferred the present Civil Miscellaneous Appeal against the judgment and decree dated 28.03.2019 passed by the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Uthangarai in M.C.O.P. No.7 of 2018.

2. The learned counsel appearing on behalf of the appellant-State Transport Corporation mainly contended that the compensation awarded by the Motor Accidents Claims Tribunal is highly excessive and exorbitant and therefore, it is to be set aside.

3. In a case of injury, compensation of Rs.2,16,000/- was awarded. The injured person is the driver and the income of the injured is Rs.8,000/- per month. However, the claimant has not produced any proof to show that he was earning a monthly income of Rs.8,000/-.

4. The Tribunal has failed to consider the fact that the injured person has driven the vehicle in a rash and negligent manner and hit the backside of State Transport Corporation Bus and thereby caused an accident. Therefore, the Tribunal has committed an error in fixing the liability on the part of the appellant-State Transport Corporation.

5. The learned counsel appearing on behalf of the respondent-claimant opposed the contentions of the learned counsel appearing on behalf of the appellant-State Transport Corporation by stating that the Tribunal has considered all these aspects and arrived a conclusion that the claimant is entitled for a compensation of Rs.2,16,000/-. The claimant was a driver and therefore, fixing of Rs.8,000/- as income per month, cannot be excessive and further, the injured sustained grievous injuries. All these aspects were considered by the Tribunal and the compensation was awarded. Thus, the present Civil Miscellaneous Appeal is devoid of merits and liable to be dismissed.

6. The accident occurred on 11.03.2015 at about 09.30 P.M., on Salem to Harur Road at 'A' Pallipatti Bus Stop. The injured claimant was aged about 31 years at the time of accident.

7. As per the claim petition, the injured was working as an Ambulance Vehicle Driver. The monthly income stated in the claim petition was Rs.25,000/- per month. 'A' Pallipatti Police Station registered a case in Crime No.43 of 2015 under Sections 279 and 337 of IPC.

8. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties.

9. As far as the negligence aspect is concerned, the Tribunal formed an opinion that as per the oral evidence of PW-1, the accident had occurred due to the rash and negligent driving of the driver of the Tamil Nadu State Transport Corporation Bus bearing Registration No.TN-29-N-1620.

10. The Tribunal relied on the copy of the FIR (Ex.P-1) and a case has been registered only against the claimant. However, RW-1 deposed that the accident occurred before 'A' Pallipatti Police Station and after the accident, the Ambulance Driver was taken to the Hospital and he lodged a complaint against the claimant, who sustained injuries and taken to the Hospital. Thus, the driver of the State Transport Corporation Bus had lodged a complaint against the claimant. The claimant sustained grievous injuries and had taken to Hospital immediately for treatment. Thus, there was no opportunity for the claimant or any other person to give a complaint against the driver of the State Transport Corporation Bus. Thus, the Tribunal formed an opinion that such a statement made by the driver of the State Transport Corporation Bus, cannot be taken into account for the purpose of deciding the negligence aspect.

11. 'A' Pallipatti Police Station registered a case in Ex.P-1 FIR against the claimant. Immediately after the accident, the driver of the State Transport Corporation Bus rushed to the Police Station and lodged a false complaint against the claimant. 'A' Pallipatti Police Station, after investigation, closed the case as 'Mistake of fact'. Therefore, it is to be construed that the accident had occurred due to the rash and negligent act of the driver of the State Transport Corporation Bus.

12. This Court is of the considered opinion that even in such circumstances, if any doubt arises regarding the negligence aspect, the principle of 'Preponderance of Probabilities' as well as the manner in which the police complaint was registered alone can be considered by the Courts for award of compensation. Possibly inference can be drawn in such circumstances for the purpose of grant of award, if the accident occurred and the claimant sustained grievous injuries.

13. In the present case, the accident was not disputed. Admittedly, the driver of the State Transport Corporation Bus lodged a complaint against the claimant. Immediately the claimant was admitted in the Hospital for treatment on account of grievous injuries.

14. This being the admitted factum, this Court is of the considered opinion that the Tribunal has rightly come to a conclusion with reference to the facts and applied the principle of 'Preponderance of Probabilities' and granted compensation to the claimant. Under these circumstances, the decision of the Tribunal in fixing the liability on the State Transport Corporation Bus cannot be found fault and it is certainly

reasonable and based on the facts as well as based on the principle of 'Preponderance of Probabilities'.

15. As far as the quantum of compensation is concerned, the permanent disability of 25% was fixed. The Doctor assessed the disability as 25% and the nature of injuries sustained by the claimant were undoubtedly grievous.

16. PW-1 deposed that he sustained injuries in his forehead, right index finger, right side lower aspect of abdomen and chest, left forearm dorsal aspect and also sustained multiple injuries over his body. The Disability Certificate (Ex.C-1) issued by the Medical Board at Government Head Quarters Hospital, Krishnagiri, the partial permanent disability is assessed at 25%. The claimant was aged about 31 years at the time of accident.

17. Under these circumstances, this Court do not find any perversity or excessiveness in awarding the compensation of Rs.2,16,000/- by the Tribunal. The monthly income of Rs.8,000/- fixed for the driver by the Tribunal, also cannot be considered as excessive. Thus, this Court is not inclined to interfere with the award passed by the Motor Accidents Claims Tribunal, Uthangarai.

18. Accordingly, the judgment and decree dated 28.03.2019 passed by the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Uthangarai in M.C.O.P. No.7 of 2018 stands confirmed and consequently, the C.M.A.No.1143 of 2020 stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

19. The appellant-State Transport Corporation is directed to deposit the entire Award amount with accrued interest, if not already deposited, within a period of 12 weeks from the date of receipt of a copy of this judgment and on receipt of such deposit, the claimant is permitted to withdraw the award amount as per the Award of the Tribunal by filing an appropriate application and payments are to be made only through RTGS.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Sub Judge,
Sub Court-cum-Motor Accidents Claims Tribunal,
Uthangarai.

2.The Section Officer
VR Section
High court
Chennai-104

+1 cc to Mr.D.Raghu Advocate sr26200

CMA No.1143 of 2020

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