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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CIVIL MISCELLANEOUS APPEAL NO.4028 OF 2019

AND

C.M.P.NO.22756 OF 2019

The Managing Director,
TSTC, Salem Limited,
No.12, Ramakrishna Road,
Salem 636 007.

...Appellant / 1st Respondent

Versus

1.Nataraj

...1st Respondent / Claimant

2.National Insurance Company Ltd.,
Branch Office-III,
Salem 636 007.

3.Venus PPV Spinning Mills Private Ltd.,
A4, Salem Industrials, Co-operative State,
Udayapatti, Salem 636 140.

...2nd & 3rd Respondents /
2nd & 3rd Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 01.11.2018 made in M.C.O.P.No.354 of 2011 by the Motor Accident Claims Tribunal, Special Subordinate Judge-II, Salem.

For Appellant : Mr.Venkatachalam D.

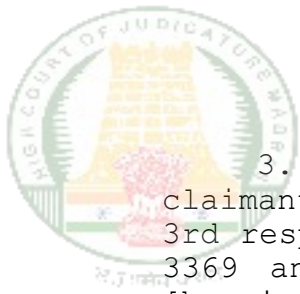
For Respondents : Mrs.R.Poornima for R1

Mrs.N.B.Surekha for R2

JUDGEMENT

Challenging the award passed by the tribunal, the 1st respondent - Tamil Nadu State Transport Corporation in the claim petition has come forward with this Civil Miscellaneous Appeal.

2. It is seen from the records that pending claim petition, the owner of the van was impleaded as 3rd respondent and the insurer of the van was impleaded as 2nd respondent.



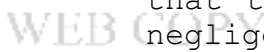
3. It is a case of injury. The 1st respondent herein is the claimant [hereinafter will be referred to as "the injured"]; the 3rd respondent is the owner of the van bearing Regn. No. TN 30 P 3369 and the 2nd respondent is the insurer of the said van [hereinafter will be referred to as "insurance company"]. The Appellant is the State Transport Corporation [hereinafter will be referred to as the "appellant corporation"].

4. According to the injured, on 03.10.2010 at about 03.00 p.m. while he was driving the van belonging to the 3rd respondent slowly in a cautious manner following the traffic rules and regulation on the left side of Salem - Belur Main Road, the bus bearing Regn. No. TN 27 N 1644 belonging to the appellant corporation which was being driven by its driver at an uncontrollable speed in a rash and negligent manner, dashed against his van as a result of which, he sustained serious injuries. He was immediately rushed to a private hospital at Salem where he was admitted as an inpatient had undergone a surgery. He was taken treatment for nearly one month. Due to the impact of the injuries sustained in the road accident, he is unable to discharge his duties as before. Hence, seeking a sum of Rs.15,00,000/- as compensation from the appellant corporation, he filed the claim petition before the tribunal.

5. The appellant corporation contested the claim petition inter alia contending that the accident was taken place due to the rash and negligent driving of the driver of the van and a FIR has also been registered against him. Absolutely there is no evidence to fix negligence on the part of the driver of the bus of the corporation. It is further contended by them that in any event, the compensation claimed under various heads are highly excessive and speculative.

6. The insurance company filed their counter inter alia contending that the accident was taken place only due to the rash and negligent driving of the bus of the appellant corporation and therefore, the insurance company cannot be made liable to compensate the 1st respondent/claimant for the injuries sustained in the road accident.

7. Before the tribunal, in order to prove his case, the injured examined himself as P.W.1 and marked as many as 6 documents as Exs.P.1 to P.6. On the other side, the conductor of the respondent corporation was examined as R.W.1 and the Assistant Manger of the insurance company was examined as R.W.2 and 2 documents were marked as Exs.R.1 and R.2 through R.W.2. No documentary evidence was adduced by the respondent corporation. Pending trial, the 1st respondent/claimant was referred to the District Medical Board for assessment of the disability said to have been suffered by him due to the injuries sustained in the



8. On considering the available materials, the tribunal held that the FIR is not a conclusive proof of evidence to prove the negligence on the part of the injured and on the basis of the available materials, the tribunal came to a conclusion that the accident was taken place due to the rash and negligent driving of the driver of the respondent corporation bus. So far as the quantum of compensation is concerned, the tribunal has assessed the monthly income of the deceased as Rs.5,500/- and by adding the benefit of 40% towards future prospects, the tribunal assessed the annual income of the deceased as Rs.92,400/-. Though the injured was assessed to have suffered 18% disability due to the injuries sustained in the road accident, the tribunal by taking his functional disability at 9% and adopting the multiplier of 17, awarded a sum of Rs.1,49,688/- towards future loss of income due to permanent disability. Apart from the above, the tribunal awarded a sum of Rs.16,500/- towards pain and sufferings, loss of amenities, transport charges, nutritious food, attender charges and damages to clothing and personal properties. Challenging the liability as well as the quantum of compensation, the respondent corporation has come forward with the instant appeal.

9. The learned counsel appearing for the appellant corporation submitted that the accident was taken place due to the rash and negligent driving of the driver of the van belonging to the 3rd respondent and a FIR has been filed against the driver of the van immediately after the accident. The conductor of the bus was also examined as R.W.1. The tribunal without considering the materials available on record has mechanically fixed the negligence on the driver of the appellant corporation bus. The learned counsel further submitted that in so far as the quantum of compensation is concerned, by adopting the multiplier method, the tribunal has awarded a huge sum as compensation for the simply injury sustained in the accident. The adoption of multiplier method is not legally sustainable and, therefore, the same requires interference by this court.

10. Per contra, the learned counsel appearing for the injured/claimant contended that the tribunal after having considered the materials available on record rightly fixed negligence on the driver of the bus of the appellant corporation and the same does not call for any interference by this court. So far as the quantum of compensation is concerned, the injured sustained multiple injuries. Even though the injured was assessed to have suffered 18% disability by the medical board, the tribunal has taken only 9% as functional disability and awarded a just and adequate compensation and therefore, the



quantum of compensation also does not require any interference by this court.

11. I have considered the rival submissions carefully.

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12. Merely because the FIR was registered against the injured van driver, it cannot be held that he was negligent. It is the settled law that registration of the FIR by itself is not a conclusive proof of negligence. Normally, the injured person would be taken to the hospital first, and by that time, the driver, on whose negligence the accident happened taking advantage of the situation, would rush to the police station to give a complaint against the other party. Therefore, negligence could not be fastened on the injured van driver merely on the basis of the FIR. Even if the criminal case ended in conviction, the tribunal is expected to decide the aspect of negligence independently on the preponderance of probability. In the instant case, the driver of the bus was not examined and the conductor alone was examined. In fact, a disciplinary proceedings has also been initiated against the driver of the bus for negligent driving. Considering all these aspects of the matter, the tribunal rightly held that the accident was taken place due to the rash and negligent driving of the driver of the bus of the appellant corporation and this court does not find any perversity or infirmity in the same.

13. So far as the quantum of compensation is concerned, the injured is said to have suffered fractures of shaft of left femur and fracture of medial malleolai. He was given treatment at SPMM Hospital, Salem, from 03.10.2010 to 03.11.2010 and a surgery was also conducted. He is continued to suffer the consequence of the injuries. He was assessed to have suffered 18% disability by the District Medical Board. The disability certificate describes the disability being suffered by the injured as follows:-

1. He has difficulty in squatting and sitting cross legged.
2. Pain at the right ankle and left hip
3. Malunion of medial malleolus and talus and femur

The tribunal after having considered all these aspects of matter, concluded that the functional disability of the injury at 9% and applying the multiplier method, awarded a sum of Rs.1,49,688/- which in the considered opinion of this court appears to be just and reasonable and cannot be said to be excessive. So far as the compensation awarded under the other heads also appear to be just and reasonable and therefore, the same also do not call for any interference by this court.

14. For the forgoing discussions, this court finds no perversity or infirmity in the order of the tribunal and, therefore, the appeal deserves only to be dismissed.



In the result, this Civil Miscellaneous Appeal is dismissed and the compensation granted by the tribunal stand confirmed. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

The Special Sub Judge-II,
Motor Accident Claims Tribunal,
Salem.

Copy to :

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

+1cc to Mrs.R.Poornima, Advocate SR.No.37619

+1cc to Mrs.N.B.Surekha, Advocate SR.No.37650

C.M.A.No.4028 of 2019

SSI(CO)
RVM(11/08/2021)