



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2485 of 2014

and

M.P.No.1 of 2014

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Coimbatore Division-II
Chennimalai Road, Erode.

.. Appellant/Respondent

Vs.

Subramani @ Siva Subramaniam

.. Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2013 made in M.C.O.P.No.196 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruppur.

For Appellant : Ms.R.T.Sundari

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

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award dated 31.01.2013 made in M.C.O.P.No.196 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruppur.

2.The appellant/Transport Corporation is respondent in M.O.P.No.196 of 2010 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.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.01.2010.



3. According to the respondent, on the date of accident i.e., on 09.01.2010 at about 7.30 hours, while he was travelling in a two wheeler from South to North direction in Perumanallur to Thoravalur Road near Vallipuram bus stop, the driver of the bus belonging to the appellant / Transport Corporation, which was coming from North to South 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 driver of the bus is not responsible for the accident. The respondent rode the motorcycle speaking in cell phone at the time of accident and dashed against the right side of the bus. The accident has occurred solely due to rash and negligent riding of the motorcycle by the respondent, The owner and insurer of the two wheeler 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, 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, one M.Senthilkumar was examined as P.W.2 and Dr.P.Senthilkumar was examined as P.W.3 and six documents were marked as Exs.P1 to P6. The appellant/Transport Corporation examined one M.Arumugham, the driver of the bus as R.W.1 but did not let in any 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.4,47,700/- as compensation to the respondent.

7.Against the said award dated 31.01.2013 made in M.C.O.P.No.196 of 2010, 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 negligence is on the part of the respondent. The accident did not occur due to the negligence on the part of the driver of the



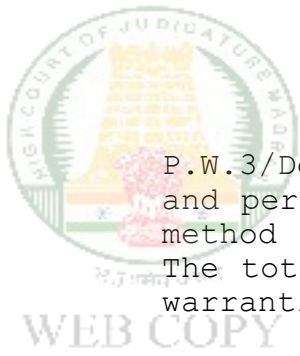
bus belonging to the appellant. The Tribunal erred in holding that the driver drove the bus in a rash and negligent manner and caused the accident. The Tribunal ought not to have granted a sum of Rs.2,88,000/- for loss of future earning and the amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

9. The learned counsel appearing for the respondent made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant/Transport Corporation as well as the learned counsel appearing for the respondent and perused the entire materials available on record.

11. It is the contention of the respondent that while he was riding his two wheeler bearing Registration No.TN-39-AL-9465, the driver of the bus belonging to the appellant drove the bus in a rash and negligent manner, dashed against the vehicle driven by the respondent and caused the accident. In the accident, the appellant suffered injuries. To substantiate this contention, the respondent examined himself as P.W.1 and deposed as per the averments made in the claim petition and marked F.I.R., which was registered against the driver of the bus as Ex.P1. On the other hand, it is the contention of the appellant that the accident has occurred only due to negligence on the part of the respondent. To substantiate this contention, the appellant examined the driver of the bus as R.W.1, who deposed to that effect. The appellant has not let in any independent witness to prove their contention. The driver of the bus has also not filed any objection to the contents of F.I.R. and has not lodged any complaint against the respondent. The Tribunal considering the evidence of P.W.1, Ex.P1/F.I.R. and in the absence of any independent witness on the part of the appellant, held that the driver of the bus belonging to the appellant/Transport Corporation was responsible for the accident and directed the appellant to pay compensation to the respondent. 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, it is the contention of the respondent that he is a sheep seller and was earning a sum of Rs.9,000/- per month. In the accident, he sustained injuries on right fore arm, right wrist and right palm. Due to the injuries and disability, the respondent could not carry on his business. The respondent examined the Doctor as P.W.3 to prove the nature of injuries. P.W.3/Doctor examined the appellant and certified that the respondent suffered 53.8% disability. The Tribunal considering the evidence of



P.W.3/Doctor, nature of business carried on by the respondent and percentage of disability suffered by him, adopted multiplier method and awarded compensation towards loss of earning power. The total compensation awarded by the Tribunal are not excessive warranting any interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.4,47,700/- 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 V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate
(Motor Accident Claims Tribunal),
Tiruppur.
2. The Section Officer,
VR Section,
High Court, Chennai.

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.41678

C.M.A.No.2485 of 2014
and M.P.No.1 of 2014

SV(CO)
HS(11/08/2021)