



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.12.2020

Pronounced On : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.705 of 2016

and

C.M.P. (MD)No.7232 of 2016

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Tamil Nadu State Transport Corporation Limited,
Through its Managing Director,
Office at By-pass Road, Madurai. ... Appellant / Respondent

Vs.

Mahalingam : Respondent /Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.03.2014 passed in M.C.O.P.No.605 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran

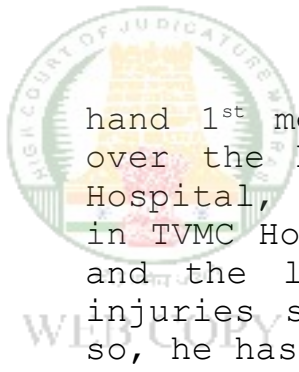
For Respondent : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the award passed in M.C.O.P.No.605 of 2013, dated 26.03.2014, on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Tirunelveli.

2.The claimant's case is that on 16.07.2013, at about 11.00 am, when the respondent/petitioner was riding his Bicycle near Kanthan Finance at Valliyoor to Nagercoil Main Road, a Bus, bearing registration No.TN 74 N 0878, owned by the Appellant Corporation, which came behind the cyclist in a rash and negligent manner and without sounding horn, had dashed against the cyclist and as a result of which, the claimant was thrown out and sustained serious injuries all over his body, that the accident was occurred only due to the rash and negligent driving of the Bus driver and hence, a case was registered against him in Crime No.351 of 2013 of Valliyoor Police Station, for the offences punishable under Section 279 and 338 of IPC and that the same is pending on the file of the Court of Judicial Magistrate, Valliyoor.

3.It is further case of the claimant/respondent that he sustained fractures over the left hand ulna, left forearm, left



hand 1st metatarsal bone and chest besides multiple injuries all over the body, that he was immediately taken to the Government Hospital, Valliyoor and after first aid treatment, he was admitted in TVMC Hospital at Palayamkottai, that he had undergone a surgery and the left hand big toe was amputated and that due to the injuries suffered, he could not attend any work and by pleading so, he has claimed total compensation of Rs.5,00,000/-.

4.The defence of the appellant is that on 16.07.2013, at about 11.00.am, when the appellant Bus was proceeding from Valliyoor to Nagercoil, the cyclist/claimant entered into the mud portion and to avoid sand portion suddenly turned right side without any signal, that though the Bus driver had immediately applied break and stopped the Bus, left side of the Bus unfortunately dashed against the Bicyclist and that the Bus driver is noway responsible for the accident. It is their further case that the amount claimed is highly excessive and that the claim of interest at 12% is also excessive.

5.During enquiry, the claimant/respondent examined himself as P.W.1, Thiru.Subbiah, Record Clerk attached to the RTO, Nagercoil and Dr.Poovalingam as P.W.2 and P.W.3 respectively and exhibited eight documents as Ex.P.1 to Ex.P.8. The Appellant Corporation has adduced neither oral nor documentary evidence.

6.The trial Court, upon considering the evidence, both oral and documentary, came to the conclusion that the Bus driver was responsible for the accident and fastened liability on the appellant, directing them to pay compensation of Rs.3,74,390/- with interest at 9 % per annum. Aggrieved by the said award, the Appellant Transport Corporation has preferred the present appeal.

7.The points for determination are:

(i) Whether the trial Court erred in deciding that the Bus driver was solely responsible for the accident, without considering the fact that the respondent/Bicyclist had suddenly crossed the road and invited the accident by himself?

(ii) Whether the quantum of compensation award and rate of interest granted are excessive?

(iii) Whether the impugned award dated 26.03.2014 is liable to be interfered with?

Point No.1:

8. The Appellant Transport corporation has not disputed the accident, but only disputed the negligence on the part of their Bus driver. According to the appellant, when their Bus was proceeding from Valliyoor to Nagercoil towards north, the Bicyclist in an attempt to avoid mud portion, had suddenly turned right side of the road without showing any signal and that though the Bus driver had applied the break and stopped the Bus to avoid



the accident, the respondent/claimant had dashed against the Bus and caused the accident.

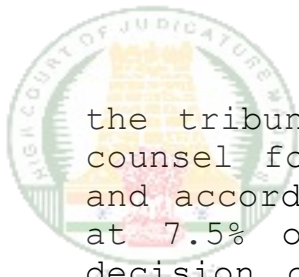
9.The respondent/claimant in his evidence before the tribunal would depose about the manner of the accident in tune with the claim petition contentions and according to him, when he was proceeding in the Bicycle near Kanthan Finance, from south to north at Valliyoor to Nagercoil main Road, the appellant Bus, which came behind in a rash and negligent manner and without sounding horn, dashed against him and that the Bus driver was solely responsible for the accident. In cross examination, he would deny the specific suggestion that without out eye sight, he suddenly crossed the road and caused the accident. Except the above, nothing was elicited by the appellant in their favour. Admittedly, FIR came to be registered against the Bus driver and that the criminal case is pending on the file of the Judicial Magistrate Court, Valliyoor.

10.It is pertinent to note that the Appellant Corporation has not chosen to examine their Bus driver nor the conductor of the Bus nor any other person, who had allegedly witnessed the occurrence. Admittedly, there is no contra evidence regarding negligence. Considering the above, the finding of the trial Court that the Bus driver was solely responsible for the accident cannot be found fault.

Points Nos.2 and 3:

11.Though the appellant has taken a stand in the appeal memorandum that the amounts awarded under various heads are excessive, they have not elaborated anything further. Admittedly, the respondent had sustained multiple fractures and more particularly, his left hand big toe was amputated. P.W.3/Doctor, would say in his evidence, that since his left hand big toe was amputated and as there was no movement of wrist, he fixed the disability at 68.8%. But the learned trial Judge, after taking into the relevant factors, has rightly fixed the disability at 50% and that since there was amputation, she has rightly applied the multiplier method and award Rs.1,35,000/- for loss of earning capacity. The tribunal has also awarded Rs.13,500/- for loss of income; Rs.5,000/- towards transportation charges; Rs.10,000/- for extra nourishment; Rs.5,000/- towards attendant charges; Rs.1,05,890/- for medical expenses; Rs.50,000/- for pain and sufferings; Rs.50,000/- for loss of amenities, all totally Rs.3,74,390/-. Considering the nature of injuries suffered, period of treatment and the disability suffered, the amounts awarded under various heads by the tribunal are very much reasonable and the same are to be sustained.

12. Though the claimant has claimed interest at 12% per annum,
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the tribunal has awarded interest at 9 % per annum. The learned counsel for the appellant objected for awarding interest at 9 % and according to him, the tribunal ought to have granted interest at 7.5% only. At this juncture, it is necessary to refer the decision of the Honourable Supreme Court in **2018(1) TN MAC 675 (SC)**, [**Reliance General Insurance Company Limited Vs. Shalu Sharma and others**] and whereunder, Apex Court has confirmed the granting of interest at 9% per annum in the case, where the accident was also occurred in 2013. In the case on hand, the accident was occurred on 16.07.2013 and as such, the quantum of interest awarded at 9 % cannot be found fault with. Considering the above, this Court decides that the above appeal is devoid of merits and that the appeal is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

13.In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 26.03.2014 passed in M.C.O.P.No.605 of 2013, on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Tirunelveli is confirmed. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.

Copy to

The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.P.Prabhakaran , Advocate SR.No.26985

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