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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.900 of 2021
and
C.M.P.No.5176 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation
(Division - I) Limited,
3/137, Salamedu,
Vazhuthareddy, Villupuram.

..Appellant/Petitioner

Vs.

Kumar

..Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.07.2020 made in M.C.O.P.No.2101 of 2016 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Court, Cuddalore.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 02.07.2020 made in M.C.O.P.No.2101 of 2016 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Court, Cuddalore.

3.The appellant is the respondent in M.C.O.P.No.2101 of 2016 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Court, Cuddalore. The respondent filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.03.2016.

4.According to respondent, on 08.03.2016 at about 12.15 hours, while he was traveling as passenger in the bus bearing Registration No.TN 23 N 2181 belonging to appellant-Transport Corporation on the Cuddalore - Panruti Main Road, near



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Thiruvathigai Railway Colony, the driver of the bus stopped the bus for alighting and boarding the passengers. When the respondent was getting down from the bus through the front door, the driver of the bus suddenly moved the bus at a great speed in a rash and negligent manner with jolting manner. Due to the same, the respondent fell down from the bus and thus, the accident occurred. In the accident, the respondent sustained multiple injuries all over the body. Immediately after the accident, the respondent was taken to Government Hospital, Panruti and then he was taken to Jipmer Hospital, Pondicherry. He has taken treatment as inpatient from 09.03.2016 to 07.04.2016 and underwent surgeries on 09.03.2016 and 28.03.2016. Therefore, the respondent filed the said claim petition claiming a sum of Rs.25,00,000/- 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, at the time of accident, while the driver of the bus was driving the bus slowly from Cuddalore to Panruti on the speed brake near Thiruvathigai Railway Colony Junction, the respondent, who was in an inebriated condition voluntarily alighted through the front doorstep of the moving bus as his house was located near the place of occurrence. The respondent voluntarily alighted from the moving bus inspite of the Driver and Conductor of the bus warned him not to get down from the bus. The accident has occurred only due to the negligence on the part of the respondent and hence, the appellant is not liable to pay any compensation to the respondent. The appellant-Transport Corporation denied the age, avocation, income, nature of injuries, disability and period of treatment taken by the respondent and stated that 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 10 documents were marked as Exs.P1 to P10. The appellant-Transport Corporation did not let in any oral and documentary evidence. The Disability Certificate issued by the Medical Board was marked as Ex.C1.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant to pay a sum of Rs.14,60,500/- as compensation to the respondent.

8.To set aside the award dated 02.07.2020 made in M.C.O.P.No.2101 of 2016, the appellant-Transport Corporation has come out with the present appeal.



9.The learned counsel appearing for the appellant contended that the Tribunal ought not to have held that mere registering of F.I.R. is more enough for fixing negligence on the part of the driver of the bus. The Tribunal erroneously fixed negligence on the driver of the bus merely relying on the F.I.R. It is well settled that negligence cannot be fixed relying on the F.I.R. or judgments of the Criminal Court. The Tribunal has to independently consider the evidence let in before it. The respondent has not filed any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the monthly income fixed by the Tribunal at Rs.6,500/- is excessive. The compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.Heard the learned counsel appearing for the appellant-Transport Corporation and perused the entire materials on record.

11.It is the case of the respondent that while he was traveling as passenger in the bus belonging to appellant-Transport Corporation on the Cuddalore - Panruti Main Road, the driver of the bus stopped the bus near Thiruvathigai Railway Colony for alighting and boarding the passengers. When the respondent was getting down from the bus through the front door, the driver of the bus suddenly moved the bus at a great speed in a rash and negligent manner, due to the which, he fell down from the bus and sustained multiple injuries all over the body. To prove the said contention, the respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the bus belonging to appellant. On the other hand, it is the case of the appellant that while the driver of the bus was driving the bus slowly on the speed brake near Thiruvathigai Railway Colony Junction, the respondent, who was in an inebriated condition voluntarily alighted through the front doorstep of the moving bus as his house was located near the place of occurrence inspite the Driver and Conductor of the bus warned him not to get down from the bus. The appellant has not examined the Driver or the Conductor of the bus or any other passenger in the bus to prove that accident has occurred only when the respondent who was in an inebriated condition, voluntarily alighted through the front doorstep of the moving bus. Further, the appellant has not filed any objection to the F.I.R., which was registered against the driver of the bus. The Tribunal considering the evidence of P.W.1, Ex.P1/F.I.R. and failure on the part of the appellant for not filing any objection to the F.I.R., not lodging any complaint against the respondent and not examining the Driver or the Conductor of the bus or any other passenger in the bus, held that accident has occurred only due to the negligence on the part of the driver of



the bus belonging to appellant-Transport Corporation. 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 case of the respondent that in the accident he sustained amputation of right leg above knee, grievous injuries on his left leg, left thigh, hip and multiple injuries all over his body. To prove the nature of injuries and disability, the respondent examined himself as P.W.1. The Medical Board examined the respondent and certified that the respondent suffered 90% disability and issued Ex.C1/disability certificate to that effect. From Ex.C1/disability certificate, it is seen that the respondent's right leg above knee was amputated. It is the further case of the respondent that at the time of accident he was aged 45 years, working as Mason and was earning a sum of Rs.20,000/- per month. Except, oral evidence, the respondent has not filed any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal following the judgment of the Hon'ble Apex Court reported in 2014 (1) TNMAC 459 (SC), [Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Company Limited] and the judgment of this Court reported in 2015 (2) TNMAC 159, [Pavalakodi and others Vs. TNSTC, Villupuram Limited], fixed a sum of Rs.6,500/- per month as notional income of the respondent and the same is not excessive. The Tribunal considering the nature of injuries, amputation of right leg above knee and the nature of work done by the respondent, adopted multiplier method for awarding compensation towards loss of earning capacity and the same is proper. The respondent was aged 45 years at the time of accident and the Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another] and 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others], rightly applied multiplier '14', granted 25% enhancement towards future prospects and awarded a sum of Rs.12,28,500/- as compensation towards loss of earning capacity and the same is not excessive. The respondent has taken treatment in the Jipmer Hospital, Pondicherry as inpatient from 09.03.2016 to 07.04.2016 and underwent surgeries on 09.03.2016 and 28.03.2016. The Tribunal considering the entire materials on record, has awarded a sum of Rs.14,60,500/- as compensation to the respondent, which is not excessive warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.14,60,500/- 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 award amount 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.2101 of 2016 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Court, Cuddalore. On such deposit, the respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

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To

1.The I Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

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

+1 Cc to Mr.K.J. Sivakumar, Advocate sr 16657.

C.M.A.No.900 of 2021

SVI (CO)
SP(03/09/2021)