



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.237 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Limited,
No.12, Ramakrishna Road,
Regional Office at Bharathipuram,
Dharmapuri.

.. Appellant/Respondent

Vs.

M.Ravindran

.. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.03.2014 made in M.C.O.P.No.2253 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 28.03.2014 made in M.C.O.P.No.2253 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

3.The appellant is the respondent in M.C.O.P.No.2253 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. The respondent filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.01.2010.

4.According to respondent, on 14.01.2010 at about 12.00 noon, while he was travelling as a pillion rider in the motorcycle bearing Registration No.TN 24 U 4980 rode by one Madesh @ Madheva on the left side of the Madhakondapalli - Denkanikottai road near Madhakondapalli kuttai, the driver of the bus bearing Registration No.TN 29 N 1332 belonging to appellant-Transport Corporation, drove the bus in a rash and negligent manner from the opposite direction without observing any rules of the road at an uncontrollable speed and dashed on the motorcycle in which the respondent was travelling as a pillion rider and caused the accident. In the accident, the



respondent sustained severe injuries on his left leg and other multiple injuries all over the body. Immediately after the accident, the respondent was taken to Government Hospital, Hosur for first aid treatment. Thereafter, he was admitted at Sparsh Hospital, Bangalore as inpatient on 14.01.2010 and on 15.01.2010 K Wire Patella was done, on 18.01.2010 SSG coverage for flap donor area was done. Therefore, the respondent filed the said claim petition claiming a sum of Rs.10,00,000/- 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 and cautiously by observing all the rules of the road with sounding horn on the left side of the Denkanikottai - Hosur road nearing Madhakondapalli, he saw the rider of the motorcycle bearing Registration No.TN 24 U 4980 riding the motorcycle rode from the opposite direction in a rash and negligent manner along with the respondent as pillion rider. On seeing this, the driver of the bus applied sudden brake and stopped the bus immediately. Thereafter the rider of the motorcycle only crossed the bus, lost his balance and slightly touched the side portion of the bus, fell down, invited the accident and sustained simple injuries. Therefore, the accident has occurred only due to negligence on the part of the rider of the motorcycle and there is no negligence on the part of the driver of the bus belonging to appellant. F.I.R. was registered against the driver of the bus only based on the influence of the respondent. The complaint filed by the driver of the bus against the rider of the motorcycle was not registered by the concerned Police Authorities and the same was intimated to the Superintendent of Police, Krishnagiri District by way of letter dated 08.02.2010. The Medical Officer from the Hosur Government Hospital certified that the rider of the motorcycle as well as the respondent consumed alcohol at the time of accident. Hence, the accident has occurred only due to the negligence on the part of the rider of the motorcycle. The owner and insurer of the motorcycle in which the respondent traveled as a pillion rider have to be impleaded as necessary parties in the claim petition. The respondent has taken treatment in the Private Hospital only with an intention to get more compensation from the appellant. The appellant-Transport Corporation denied the age, avocation, income, nature of injuries, medical expenses and disability suffered by the respondent. In any event, 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 Dr.M.Devendran was examined as P.W.2 and 5 documents



were marked as Exs.P1 to P5. On behalf of the appellant, Govindan, Conductor of the bus belonging to appellant was examined as R.W.1 and no documentary evidence was let in.

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.6,49,100/- as compensation to the respondent.

8.Challenging the quantum of compensation awarded by the Tribunal in the award dated 28.03.2014 made in M.C.O.P.No.2253 of 2013, the appellant-Transport Corporation has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the respondent failed to prove his age, avocation and income. The respondent has not proved that he suffered functional disability and lost his earning capacity. In the absence of any material evidence with regard to functional disability, the multiplier method adopted by the Tribunal for awarding compensation towards loss of earning capacity is without merits. The Tribunal ought not to have accepted the percentage of disability assessed by P.W.2/Doctor at 40% as the same is on the higher side. In the absence of any material evidence with regard to avocation and income, a sum of Rs.6,500/- per month fixed by the Tribunal as notional income of the respondent is on the higher side. The amounts awarded by the Tribunal towards pain and sufferings, loss of income and future medical expenses are excessive. The total 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.From the materials available on record, it is seen that it is the case of the respondent that he was aged 38 years, working as Building Mason and was earning a sum of Rs.10,000/-month. But he failed to prove the said contention. It is the further contention of the respondent that in the accident he sustained severe injuries on his left leg and other multiple injuries all over the body. To prove the nature of injuries and disability, he examined himself as P.W.1 and examined Dr.M.Devendran as P.W.2. P.W.2/Doctor examined the respondent and certified that the respondent suffered 50% disability and issued Ex.P5/disability certificate to that effect. P.W.2/Doctor deposed that the respondent's right knee and ankle movements are restricted by 40%, his right leg appears ugly, unable to walk, sit, squat and stand for long time. The Tribunal considering the evidence of P.W.2/Doctor and nature of work done by the



respondent, reduced the percentage of disability assessed by P.W.2/Doctor and fixed the functional disability of the respondent at 40%. The Tribunal considering the judgment of the Hon'ble Apex Court reported in 2014 (1) T.A.C 369 (S.C), [Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Company Limited], adopted multiplier method for awarding compensation for loss of earning capacity. The Tribunal considering the age, year of accident and nature of work done by the respondent, fixed a sum of Rs.6,500/- per month as notional income of the respondent, applied multiplier '14' and awarded a sum of Rs.4,36,800/- as compensation towards loss of earning capacity and the same is proper.

12.From the materials on record, it is seen that immediately after the accident, the respondent was taken to Government Hospital, Hosur for first aid treatment. Thereafter, he was admitted at Sparsh Hospital, Bangalore as inpatient on 14.01.2010 and on 15.01.2010 K Wire Patella was done, on 18.01.2010 SSG coverage for flap donor area was done. The Tribunal considering the nature of injuries and period of treatment taken by the respondent, awarded a sum of Rs.50,000/- towards pain and sufferings, Rs.25,000/- towards transportation and extra nourishment, Rs.32,500/- towards loss of income and Rs.30,000/- towards future medical expenses. The Tribunal considering the entire materials on record, has awarded a sum of Rs.6,49,100/- 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.6,49,100/- 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.2253 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. 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. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Krk



To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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Copy To

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

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.6208

C.M.A.No.237 of 2021

VSN II (CO)
GN(15/09/2021)