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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.235 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Bharathipuram,
Dharmapuri - 636 705. ..Appellant/Respondent

Vs.

Palaniammal ..Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.10.2013 made in M.C.O.P.No.2208 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem.

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 29.10.2013 made in M.C.O.P.No.2208 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem.

3.The appellant is the respondent in M.C.O.P.No.2208 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem. The respondent filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by her in the accident that took place on 13.01.2004.

4.According to the respondent, on 13.01.2004 at about 12.00 hours, while she was riding as a pillion rider in a TVS 50 motorcycle with her neighbor Duraisamy, on the extreme left side of the Salem - Dharmapuri main road, near Thalavaipatty Kamarajar Nagar, the driver of the bus bearing Registration No.TN 29 N 1474 belonging to appellant, drove the bus in a rash and negligent manner at a high and uncontrollable speed, dashed against the motorcycle in which the respondent was travelling as



a pillion rider and caused the accident. In the accident, the respondent fell down from the motorcycle and sustained grievous injuries in head and all over the body. Immediately after the accident, the respondent was taken to Sundarajan Hospital, Salem, where she has taken treatment as inpatient from 13.01.2004 to 16.01.2004 and again from 17.01.2004 to 27.01.2004. Therefore, the respondent filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by her 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, the accident has not occurred due to the negligence on the part of the driver of the bus belonging to appellant. Hence, the appellant is not liable to pay any compensation to the respondent. The appellant denied the age, avocation, nature of injuries, disability, medical bills and period of treatment taken by the respondent. The injuries sustained by the respondent are only simple in nature. 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 herself as P.W.1 and Dr.S.P.Mariappan was examined as P.W.2 and 12 documents were marked as Exs.P1 to P9 & X1 to X3. On behalf of the appellant, one R.Chinna Kannu, driver of the bus belonging to appellant-Transport Corporation 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.1,21,000/- as compensation to the respondent.

8.Questioning the quantum of compensation awarded by the Tribunal in the award dated 29.10.2013 made in M.C.O.P.No.2208 of 2010, 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 her age, 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.4,500/- is excessive. The amounts awarded by the Tribunal towards pain and sufferings, loss of income during treatment and disability are excessive and the total compensation awarded by the Tribunal are also 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 in the accident she suffered grievous injuries on head area, cerebral contusion, right supra tentorial acute subdural haematoma, left fronto temporal contusion, traumatic subarachnoid hemorrhage and gastritis, deep injuries in both shoulders, 3 x 1 cm abrasion in right shoulder, lacerated wound about 5 x 2 x 1 cm over occipital region and grievous injuries in both elbows and multiple injuries and abrasions all over the body. To prove the nature of injuries and disability, she examined herself as P.W.1 and Dr.S.P.Mariappan was examined as P.W.2. P.W.2/Doctor examined the respondent and certified that respondent suffered 45% disability and issued Ex.X1/disability certificate to that effect. P.W.2/Doctor deposed that due to the injuries on the head, the respondent would face loss of memory and frequent giddiness. The Tribunal following the guidelines from the Gazette notification issued by Ministry of Social Justice, Government of India, fixed the percentage of disability for whole body at 25%. The accident occurred in the year 2004 and the Tribunal has awarded a sum of Rs.50,000/- towards disability at the rate of Rs.2,000/- per percentage of disability and the same is not excessive. It is the claim of the respondent in the claim petition that she was doing Agricultural Work and was earning a sum of Rs.8,000/- per month. She failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the respondent and awarded a sum of Rs.18,000/- towards loss of income for four months at the rate of Rs.4,500/- per month and the same is not excessive. The respondent has taken treatment as inpatient at Sundarajan Hospital, Salem from 13.01.2004 to 16.01.2004 and again from 17.01.2004 to 27.01.2004. The Tribunal considering the entire materials on record, has awarded a sum of Rs.1,21,000/- as compensation to the respondent, which is not excessive warranting interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.1,21,000/- awarded by the Tribunal as compensation to the respondent, along with interest and cost is confirmed. The appellant-Transport Corporation is directed to deposit the award amount along with interest and cost, 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.2208 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem. 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.

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-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

krk
To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge No.I,
Salem.

+1 Cc to Mr.D.Venkatachalam, Advocate sr 6206.

C.M.A.No.235 of 2021

KV(CO)
SP(07/09/2021)