



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.238 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Bharathipuram,
Dharmapuri.

..Appellant/Respondent

Vs.

Sasikumar

..Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.08.2013 made in M.C.O.P.No.1789 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, 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 12.08.2013 made in M.C.O.P.No.1789 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.1789 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.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.12.2010.

4.According to respondent, on 01.12.2010 at about 06.10 A.M., while he was proceeding in his cycle from the Kaveripattinam Bus stop, the driver of the bus bearing Registration No.TN 29 N 1461 belonging to appellant-Transport Corporation, who was driving the bus behind the respondent, came in a rash and negligent manner and hit on the respondent's cycle from behind and caused the accident. In the accident, the respondent sustained multiple injuries and fracture. Immediately after the accident, the respondent was taken to Government



Hospital, Kaveripattinam and thereafter he was shifted to Government Hospital, Krishnagiri for further treatment. Thereafter, he was referred to PES Hospital, Kuppam for further medical treatment. Therefore, the respondent filed the said claim petition claiming a sum of Rs.7,00,000/- 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, the driver of the bus was driving the bus from Krishnagiri to Karimangalam. Near Kaveripattinam bus stand, the respondent came outside the bus stand by riding his cycle without caring any of the buses entering into the bus stand for alighting and boarding the passengers, dashed against the bus belonging to appellant entering into the bus stand and invited the accident. Therefore, the accident has occurred only due to negligence on the part of the respondent 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 injuries sustained by the respondent are only simple in nature and the respondent has filed the present claim petition only to get money from the appellant-Transport Corporation. 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 7 documents were marked as Exs.P1 to P7. The appellant-Transport Corporation did not let in any oral and documentary evidence.

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 and directed the appellant to pay a sum of Rs.3,49,830/- as compensation to the respondent.

8.Questioning the quantum of compensation awarded by the Tribunal in the award dated 12.08.2013 made in M.C.O.P.No.1789 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 fixed the functional disability at 35% as the same is on the higher side. The amount awarded by the Tribunal towards pain and sufferings is 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 at the time of accident, he was aged 24 years, working as a Driver and was earning a sum of Rs.10,000/- month. He failed to prove the said contention. It is the further contention of the respondent that in the accident he sustained multiple grievous injuries and fracture. To prove the nature of injuries and disability, he examined himself as P.W.1 and Dr.M.Devendran was examined as P.W.2. P.W.2/Doctor examined the respondent and deposed that he physically examined the respondent on 25.06.2013 and issued disability certificate. Upon perusal of X-Ray, P.W.2/Doctor found that due to the injuries sustained by the respondent, he was not able to walk without the assistance of others and he will not be able to do any work as he was doing earlier and he finds it difficult to walk for a long distance and stand for a long time and sit, squat in floor as before. P.W.2/Doctor examined the respondent and certified that respondent suffered 70% disability and issued Ex.P7/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor and nature of work done by the respondent, fixed the functional disability of the respondent at 35% and the same is in order. The Tribunal considering the evidence of P.W.2/Doctor and nature of work done by the respondent as a Driver, adopted multiplier method for awarding compensation towards loss of earning capacity and the same is proper. The Tribunal considering the age, year of accident and nature of work done by the respondent, fixed a sum of Rs.4,000/- per month as notional income of the respondent and following the judgment of the Hon'ble Apex Court reported in 2009 ACJ 1298, [Sarala Varma and others Vs. Delhi Transport Corporation and another], applied multiplier '18' and awarded a sum of Rs.3,02,400/- as compensation towards loss of earning capacity for the respondent. From the materials on record, it is seen that immediately after the accident, the respondent was taken to Government Hospital, Kaveripattinam and thereafter he was shifted to Government Hospital, Krishnagiri for further treatment. Thereafter, he was referred to PES Hospital, Kuppam for further medical treatment. The Tribunal considering the



nature of injuries and period of treatment taken by the respondent, awarded a sum of Rs.25,000/- towards pain and sufferings, Rs.10,000/- towards transportation and extra nourishment, Rs.5,000/- towards attendant charges and Rs.7,430/- towards medical expenses. The Tribunal considering the entire materials on record, has awarded total sum of Rs.3,49,830/- 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.3,49,830/- 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.1789 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.

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

True Copy

Sub-Assistant Registrar

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To

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

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

+1 CC to Mr.D.Venkatachalam, Advocate sr 6209.

C.M.A.No.238 of 2021

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