



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.236 of 2021

The Managing Director,  
TNSTC Limited,  
Bharathipuram, Salem Main Road,  
Dharmapuri.

.. Appellant/Respondent

Vs.

G.Padmanabhan

.. 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.1464 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 28.03.2014 made in M.C.O.P.No.1464 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.1464 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 26.02.2007.

4.According to respondent, on 26.02.2007 at about 21.15 hours, while he was riding a motorcycle on the Hosur - Krishnagiri road by observing all the rules of the road near Ashok Leyland Plant-II at Kmedaepalli, i.e., at 8 Km East of Police Station, the driver of the bus bearing Registration No.TN 29 N 1356 belonging to appellant-Transport Corporation, drove the bus in a rash and negligent manner without observing any rules of the road on the same direction at a high speed, lost his control and dashed on a Minidor vehicle bearing Registration No.TN 24 Y 6850 forcibly and thereafter on the motorcycle rode by the respondent and caused the accident. Due to the impact,



the respondent sustained fracture of right hand humerus bone and multiple grievous injuries all over the body and immediately he was taken to Government Hospital, Hosur for first aid treatment. Thereafter, he was admitted at Sparsh Hospital, Bangalore and has taken treatment as inpatient from 27.02.2007 to 02.03.2007. 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, while the driver of the bus was driving the bus from Hosur to Ettipallikulla by observing the rules of the road, while nearing MGR College bus stop, the driver of the bus stopped the bus and alighted and boarded the passengers. At that time, the driver of the Tata Ace Minidor vehicle bearing Registration No.TN 24 Y 6850 proceeding in front of the bus, suddenly stopped the Tata Ace without any signal. On seeing this, the driver of the bus applied sudden brake and stopped the bus immediately. But before the appellant bus hit the Tata Ace, the respondent who was proceeding in his motorcycle bearing Registration No.TN 24 Z 2516 came in the opposite direction in a rash and negligent manner, lost his balance and hit the Tata Ace Minidor vehicle at an uncontrollable speed. Due to this impact, the respondent sustained simple injuries. 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. The respondent and the driver of the Tata Ace Minidor vehicle are fully responsible for the accident. Hence, the appellant is not liable to pay any compensation. The owner and insurer of the motorcycle rode by the respondent have to be impleaded as necessary parties in the claim petition. The respondent was not possessing valid driving license at the time of accident. The respondent has taken treatment in the Private Hospital only with an intention to get more compensation from the appellant. 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 6 documents were marked as Exs.P1 to P6. On behalf of the appellant, R.Pachamuthu, Driver 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.3,17,785/- as compensation to the respondent.



8.Questioning the quantum of compensation awarded by the Tribunal in the award dated 28.03.2014 made in M.C.O.P.No.1464 of 2013, the appellant-Transport Corporation has come out with the present appeal.

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9.The learned counsel appearing for the appellant contended that the respondent failed to prove his age, avocation and income. In the absence of any material, the monthly income fixed by the Tribunal at Rs.13,557/- is excessive. The injuries sustained by the respondent are only simple in nature. The Tribunal ought not to have accepted the percentage of disability as 50% as assessed by P.W.2/Doctor. The amounts awarded by the Tribunal towards pain and sufferings, disability and loss of income are excessive. 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 he sustained fracture and injuries over the left foot. 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 deposed that the respondent will not be able to lift weights and suffers pain while doing ordinary work by his right hand and certified that respondent suffered 50% disability and issued Ex.P6/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor, Ex.P6/disability certificate issued by P.W.2/Doctor and following the Division Bench judgment of this Court reported in 2012 (1) TNMAC 611(DB), [New India Assurance Company Limited, No.45, 2<sup>nd</sup> Line Beach, Moore Street, Chennai - 600 001 Vs. Kannayiram and another], awarded a sum of Rs.1,50,000/- towards disability at the rate of Rs.3,000/- per percentage of disability and the same is not excessive. It is the claim of the respondent in the claim petition that he was working as Mechanic (I.T.I.) in Ashok Leyland-2<sup>nd</sup> Unit, Hosur and was earning a sum of Rs.13,557/- plus Rs.399/- as incentive relating to productivity per month. The respondent proved the same by producing Ex.P3/salary certificate. The respondent further contended that due to the injuries and disability suffered by him in the accident, he has not attended his office and has not received salary for a period of six months. To prove the said contention, the respondent marked Ex.P4/absent certificate to show that he has not attended his Office from 27.02.2007 to 07.08.2007. The Tribunal considering Ex.P3/salary certificate and Ex.P4/absent certificate, fixed a sum of Rs.13,557/- as monthly income of the respondent and awarded a sum of Rs.67,785/- as compensation towards loss of income for five months 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 from 27.02.2007 to 02.03.2007. 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.10,000/- towards attendant charges, Rs.20,000/- towards transportation and extra nourishment and Rs.10,000/- for loss of expectation of life. The Tribunal considering the entire materials on record, has awarded total sum of Rs.3,17,785/- 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.3,17,785/- 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.1464 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-IV)

// True Copy //

Sub Assistant Registrar

krk

To

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

Copy to

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

+1CC to M/s.D.Venkatachalam, Advocate, SR.No. 6207

C.M.A.No.236 of 2021

KV(CO)  
B.VC (02/09/2021)