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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1177 of 2021
and C.M.P.No.5979 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Railway Station New Road,
Kumbakonam Town and District Munsif.

.. Appellant/Respondent 2

Vs.

1.Daultaraj

.. Respondent 1/Petitioner

2.Balakrishnan

.. Respondent 2/Respondent 1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and order dated 06.09.2019 made in M.C.O.P. No.173 of 2018, on the file of the Sub Court, FAC, (Motor Accidents Claims Tribunal), Karaikal.

For Appellant : M/s.P.Rajathi
for Mr.D.Raghu

For Respondents : Mr.R.Muruga Bharathi (For R1)

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the award of the Tribunal dated 06.09.2019 made in M.C.O.P. No.173 of 2018, on the file of the Sub Court, FAC, (Motor Accidents Claims Tribunal), Karaikal.

2.By consent of the learned counsel appearing for the appellant as well as the 1st respondent, the appeal is taken up for final disposal at the admission stage itself.



3.The appellant is the 2nd respondent in M.C.O.P. No.173 of 2018, on the file of the Sub Court, FAC, (Motor Accidents Claims Tribunal), Karaikal. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.08.2016.

4.According to the 1st respondent, on the date of accident, when he was riding his Motorcycle bearing Registration No.TN-51-P-5860 towards South to North direction at Poovam, near Canara Bank ATM, the 2nd respondent, driver of the Bus bearing Registration No.TN-68-N-0355 owned by the appellant-Transport Corporation drove the same in a rash and negligent manner from North to South direction and dashed against the Motorcycle in which the 1st respondent traveled and caused the accident. In the accident, the 1st respondent sustained grievous injuries and fracture. The accident occurred only due to rash and negligent driving by 2nd respondent, driver of the Bus owned by the appellant and hence, the 1st respondent claimed compensation against the 2nd respondent and appellant as driver and owner of the Bus involved in the accident respectively.

5.The 2nd respondent, driver of the Bus, remained exparte before the Tribunal.

6.The appellant-Transport Corporation filed counter statement and denied all the averments made by the 1st respondent in the claim petition, including the manner of accident. According to the appellant, on the date of accident, when the 2nd respondent was driving the Bus slowly, at opposite of Canara Bank ATM, Poovam, the 1st respondent drove his Motorcycle at hectic speed, without following the traffic rules from opposite direction and hit against the Bus, fell down on the road and sustained injuries. The accident occurred only due to the negligent riding by 1st respondent and there is no fault on the part of the 2nd respondent, driver of the Bus. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The 1st respondent has to prove his age, avocation and income, injuries sustained and treatment taken, to claim compensation and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 8 documents as Exs.P1 to P8. The



appellant did not let in any oral and documentary evidence. The disability certificate of the 1st respondent was marked as Ex.X1.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 2nd respondent, driver of the Bus owned by the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.9,81,350/- as compensation to the 1st respondent.

9.To set aside the award of the Tribunal dated 06.09.2019 made in M.C.O.P. No.173 of 2018, the appellant - Transport Corporation has come out with the present appeal.

10.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal failed to note that the accident occurred only due to rash and negligent riding by 1st respondent/rider of the Motorcycle. The Tribunal erroneously fixed negligence on the driver of the Bus merely relying on the FIR. It is well settled that negligence cannot be fixed relying on the FIR or judgments of the Criminal Court. The Tribunal has to independently consider the evidence let in before it. The learned counsel further contended that in the absence of any evidence by the 1st respondent to prove his age, avocation and income, the Tribunal erred in fixing Rs.6,000/- per month as notional income and awarding a sum of Rs.9,81,350/- as total compensation. The Tribunal erred in adopting multiplier method for calculating loss of earning capacity. The Tribunal erroneously calculated the medical bill (Ex.P6) as Rs.1,16,650/-, instead of Rs.1,03,450/-. The amounts awarded by the Tribunal under other heads are also excessive and prayed for setting aside the award of the Tribunal.

11.Heard the learned counsel appearing for the appellant-Transport Corporation as well as the 1st respondent and perused the materials available on record.

12.It is the case of the 1st respondent that while he was riding his Motorcycle from South to North direction at Poovam, near Canara Bank ATM, the 2nd respondent, driver of the Bus owned by the appellant-Transport Corporation drove the same in a rash and negligent manner in opposite direction and dashed against the Motorcycle in which the 1st respondent traveled and caused



the accident. To prove his case, the 1st respondent examined himself as P.W.1 and marked FIR registered against the driver of the Bus as Ex.P1. On the other hand, it is the contention of the appellant/Transport Corporation that the accident occurred only due to rash and negligent riding by 1st respondent/rider of the Motorcycle. They did not file any document to prove the same. The Tribunal considering all the materials on record in proper perspective, including Ex.P1 - FIR, Ex.P3 - Motor Vehicle Inspector's report and the evidence of P.W.1, in the absence of any contra evidence to the evidence of P.W.1 and objection raised to the FIR being registered against the driver of the Bus, rightly fixed negligence on the driver of the Bus and directed the appellant to pay the compensation to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, from the materials on record, it is seen that the 1st respondent suffered grievous injuries in the accident and was referred to the Medical Board. The Medical Board at Government Hospital, Karaikal examined the 1st respondent and certified that the 1st respondent suffered 61% disability, including 36% functional disability. The Medical Board has opined that the 1st respondent walks with mild limping, has difficulty in squatting, sitting cross leg, walking on stair and long distance walking and malunited fracture in both hips. The Tribunal considering the fact that the injuries sustained in the accident would affect the earning capacity of the 1st respondent who was doing Jewellery business, earning a sum of Rs.25,000/- per month at the time of accident, rightly adopted multiplier method to award compensation towards disability. The 1st respondent did not file any document to prove his avocation and income. In the absence of any evidence, the Tribunal fixed a sum of Rs.6,000/- per month as notional income. Considering the year of accident and nature of work done by the 1st respondent, the monthly income fixed by the Tribunal is not excessive. The amounts awarded by the Tribunal under different heads are also not excessive, warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.9,81,350/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is



confirmed. The appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount 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.173 of 2018. On such deposit, the 1st 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, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
Fast Track Court,
(Motor Accident Claims Tribunal),
Karaikal.

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

+1CC to Mr.D.Raghu, Advocate, SR.No. 19560

+1CC to Mr.R.Muruga bharathi, Advocate, SR.No. 19311

C.M.A.No.1177 of 2021
and
C.M.P.No.5979 of 2021

PMK(CO)
B.VC (17/09/2021)