



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.441 of 2021
and
C.M.P.No.2797 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
43, Mettupalayam Road,
Coimbatore. .. Appellant/Respondent

Vs.

S.Subramanian .. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.03.2019 made in M.C.O.P.No.1646 of 2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant : Mr.K.J.Sivakumar

For Respondent : Mr.S.P.Yuaraj

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 29.03.2019 made in M.C.O.P.No.1646 of 2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

3.The appellant is the respondent in M.C.O.P.No.1646 of 2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur. The respondent filed the above said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.05.2017.

4.According to respondent, on 25.05.2017 at about 08.50 hours, while he was driving the motorcycle bearing Registration No.TN 39 CZ 4574 from North to South on the Avinashi - Tirupur



Road near Poppy's Hotel in front of IOP Petrol Bunk, the driver of the bus bearing Registration No.TN 38 N 3035 belonging to appellant-Transport Corporation, who was driving the bus behind the motorcycle driven by the respondent, came in a rash and negligent manner and dashed on the motorcycle driven by the respondent and caused the accident. In the accident, the respondent sustained grievous injuries at right elbow fracture, right leg, facial injury and multiple injuries all over his body. Immediately after the accident, the respondent was taken to Sugansaga Hospital, Poondi and Ganga Hospital, Coimbatore, where he has taken treatment as inpatient for one month and further taken treatment till filing of the claim petition. Therefore, the respondent filed the said claim petition claiming a sum of Rs.15,00,000/- 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, on 25.05.2017, while the driver of the bus was driving the same from Coimbatore to Tiruppur by observing the road traffic rules. At 08.50 A.M., while he was near Poondi, the driver of the bus saw the respondent, who was driving the motorcycle in front of the bus by speaking over mobile phone in a zigzag manner. On seeing the negligent act of the respondent, the driver of the bus sounded horn and reduced the speed of the bus. In spite of the precautions taken by the driver of the bus, the respondent, who was proceeding in the same style, lost his control and dashed on the rear side of the bus and invited the accident. Hence, the accident has occurred only due to the negligence on the part of the respondent and not due to the negligence on the part of the driver of the bus. Therefore, the appellant is not liable to pay any compensation to the respondent. The Police case registered against the driver of the bus is without any proper investigation and also based on false complaint. The owner and insurer of the motorcycle driven by the respondent have to be impleaded as necessary parties in the claim petition. Further, the appellant denied the Registration Certificate, Fitness Certificate and insurance of the motorcycle driven by the respondent. The injuries sustained by the respondent are only simple in nature and he exaggerated the same for the purpose of getting higher award amount. The appellant-Transport Corporation denied the age, avocation, income, nature of injuries, disability and period of treatment taken by the respondent and stated that the quantum of compensation claimed by him is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the respondent examined himself as P.W.1 and one Mahendran, co-worker of the respondent was



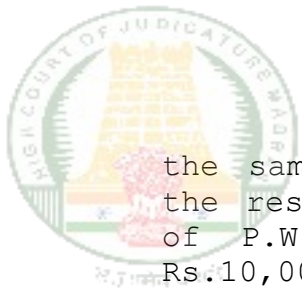
examined as P.W.2 and 4 documents were marked as Exs.P1 to P4. The appellant-Transport Corporation examined one Prem Kumar, the driver of the bus as R.W.1 and no document was marked.

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.12,74,000/- as compensation to the respondent.

8.To set aside the award dated 29.03.2019 made in M.C.O.P.No.1646 of 2017, the appellant-Transport Corporation has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal ought not to have accepted the evidence of P.W.1, whose evidence was not corroborated by any other independent witness and ought not to have held that mere registering of F.I.R. is more enough for fixing negligence on the part of the driver of the bus. The Tribunal erroneously fixed negligence on the driver of the bus merely relying on the F.I.R. It is well settled that negligence cannot be fixed relying on the F.I.R. or judgments of the Criminal Court. The Tribunal has to independently consider the evidence let in before it. The respondent failed to prove his age, avocation and income. The Tribunal ought not to have taken the disability of the respondent at 50%, which is on the higher side. The amount awarded by the Tribunal towards pain and sufferings and extra nourishment are excessive and prayed for setting aside the award passed by the Tribunal.

10.Per contra, Mr.S.P.Yuaraj, learned counsel appearing for the respondent contended that in the accident, the respondent sustained grievous injuries at right elbow fracture, right leg, facial injury and multiple injuries all over his body. Immediately after the accident, the respondent was taken to Sugansaga Hospital, Poondi and Ganga Hospital, Coimbatore, where he has taken treatment as inpatient for one month. The Medical Board examined the respondent as per the Letter of the Tribunal dated 14.11.2018 in Letter No.1140/2018 and certified that the respondent suffered 50% partial permanent disability and issued letter dated 03.01.2019 in Letter No.1140/2018. The Tribunal considering the letter issued by the Medical Board and held that the respondent could not able to do the work as he was doing earlier and adopted multiplier method for awarding loss of earning capacity and the same is proper. At the time of accident, the respondent was aged 33 years working as Fabric Operator at Frontier Knitters, 2nd Railway Gate, Uthukuli Road, Tirupur and was earning a sum of Rs.10,000/- per month. To prove



the same, the respondent examined one Mahendran, co-worker of the respondent as P.W.2. The Tribunal considering the evidence of P.W.2, fixed the monthly income of the respondent at Rs.10,000/-, granted 25% enhancement towards future prospects, adopted multiplier method and awarded compensation towards loss of earning capacity and the same is proper. The Tribunal considering entire materials on record, has awarded a sum of Rs.12,74,000/- as compensation to the respondent, which is not excessive and prayed for dismissal of the appeal.

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

12. The present appeal is filed by the appellant-Transport Corporation challenging the negligence fixed on the part of the driver of the bus, liability fastened on the part of the appellant-Transport Corporation and excessive compensation awarded by the Tribunal to the respondent. Apart from raising various grounds, the learned counsel appearing for the appellant contended that the Tribunal ought not to have granted compensation for 50% disability by adopting multiplier method, Rs.1,00,000/- for pain and sufferings and Rs.75,000/- for extra nourishment. The respondent has not filed any disability certificate before the Tribunal. From the award of the Tribunal it is seen that the Tribunal has stated that the respondent was referred to Medical Board and the Medical Board examined the respondent and assessed that respondent suffered 50% partial permanent disability. The Tribunal accepted the said disability certificate issued by the Medical Board and adopted multiplier method and granted compensation for loss of earning capacity. From the award of the Tribunal, it is seen that the disability certificate of the respondent is not marked. In the records received from the Tribunal by the Registry, it is seen that the Tribunal relied on the letter No.10131/2018 dated 03.01.2019 of the Medical Board and fixed the disability of the respondent at 50%. Whereas, in the records received from the Tribunal by the Registry, the letter No.10131/2018 dated 03.01.2019 of the Medical Board relied on by the Tribunal is not available. In view of the non-availability of the said letter of the Medical Board with regard to disability of the respondent, this Court is not deciding the appeal whether the multiplier method adopted by the Tribunal is correct or not. In view of the same, the award of the Tribunal is liable to be set aside and it is hereby set aside and the M.C.O.P.No.1646 of 2017 is remanded back for fresh consideration to the Tribunal on merits. The Tribunal is directed to mark the copy of the letter referred by the Medical Board in the award and give reason for granting compensation to the respondent.



13. In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is set aside. The appellant-Transport Corporation is permitted to withdraw the award amount, if any lying in the deposit to the credit of M.C.O.P.No.1646 of 2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur, if the award amount has already been deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

krk

NOTE: The Registry is directed to send back the entire records received from the Lower Court properly.

To

1. The II Additional District Judge,
Motor Accidents Claims Tribunal,
Tiruppur.

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

(With a direction to send back the entire records
received from Motor Accidents Claims Tribunal
II Additional District Judge, Tiruppur properly)

Copy to

The Deputy Registrar (Records, High Court, Madras.

+1cc to M/s.K.J.SivaKumar, Advocate, S.R.No.18292

C.M.A.No.441 of 2021

GMI (CO)
B.VC(11/10/2021)