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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2021

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THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.No. 2513 of 2021 and
C.M.P.No.14435 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram Division No.1,
Villupuram,
3/137, Salamedeu,
Vazhuthareddy and post,
Villupuram Taluk.

...Appellant/1st Respondent

vs.

1. Senthil

..1st Respondent/Petitioner

2. S.Arul Prakash

3. The Shriram General Insurance Company Limited,
Divisional Office at No.66,
Thirumalai Pillai Road,
T-Nagar, Chennai.

...Respondents 2 & 3/Respondents 2 & 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.02.2019 made in M.C.O.P.No. 827 of 2017 on the file of the Motor Accident Claims Tribunal, The Special Sub Court (MCOP), Tiruvannamalai.

For Appellant:

Mr.K.J. Sivakumar

J U D G M E N T

This Appeal has been filed by the Transport Corporation challenging the Award dated 25.02.2019 passed by the Motor Accident Claims Tribunal, the Special Sub Court (MCOP), Tiruvannamalai in M.C.O.P.No. 827 of 2017, directing the Appellant/Transport Corporation to pay the first Respondent a sum of Rs.1,00,000/- as compensation for the injuries sustained in an accident which occurred on 09.12.2012 involving the bus owned by the Appellant/Transport Corporation.



2. Before the Tribunal, the First Respondent/Claimant claimed a sum of Rs.5,00,000/- as compensation for the injuries sustained by him. On the side of the First Respondent/Claimant, P.W.1 was examined as witness and Exs.P1 to P6 were marked before the Tribunal. On the side of the Appellant/Transport Corporation, no witness was examined and no exhibit was marked. Ex.C1 was marked as Court Exhibit.

3. On consideration of the oral and documentary evidence available on record, the Tribunal has awarded a sum of Rs.1,00,000/- as compensation to the first Respondent. Details of the compensation awarded by the Tribunal under the impugned Award, are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Permanent Disability	1,00,000/- (20 %x 5000)
Total	Rs.1,00,000/-

4. Heard the learned counsel for the parties and perused the material documents available on record.

5. The Appellant has challenged the impugned award on the ground that the learned Judge has failed to consider the Ex.P1 - F.I.R. Further, since the claim petition filed under Section 163A of the Motor Vehicles Act, the award has to be passed following the structured formula given in the second schedule of the Act, which has not been done by the Tribunal. The learned trial Judge ought not to have taken permanent disability of the first Respondent as 20% which is on higher side and the same needs to be reduced.

6. Admittedly the date of the accident is not in dispute. P.W.1- First Respondent/Claimant was examined and he was not even cross examined by the counsel for the Appellant/Transport Corporation. No contra evidence has been produced by the Appellant before the Tribunal to disprove the contention of the first Respondent that only due to the rash and negligent driving by the driver of the bus owned by the Appellant/Transport Corporation, the accident had happened which resulted in injuries sustained by him. Further, the Claims Tribunal by considering the fact that since the Claimant filed the application under Section 163 (A) of the Motor Vehicles Act, he need not plead or prove the negligence. The Claims Tribunal also taking note of the Judgment of the Hon'ble Supreme Court in the case of United India Insurance Company Limited Vs. Sunilkumar and another reported in CDJ-2017 (SC) 1291, wherein



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it is held that it is not open to the Insurer or Transport Company to raise the defence of negligence on the part of the victim, has held that the petition filed by the claimant is maintainable under Section 163 A of the Motor Vehicles Act and the claimant is entitled to compensation.

7. Insofar as the fixation of 20% disability on the first Respondent is concerned, the same is supported by documentary evidence, which has been marked as Ex.C1- disability certificate issued by Medical Board before the Tribunal. Admittedly, the first Respondent has sustained following injuries; i) fracture at the Right Femur ii) A Laceration measuring 4x1x1C.M. at the mandible and iii) A Laceration measuring 2x2C.M. at the right knee and he has filed the discharge summary (Ex.P5) issued by Government General Hospital, Chennai. The disability certificate, which would clearly reveal that fixing 20% disability on the first Respondent is a just one.

8. There was an amendment in the II Schedule of Section 163 (A) of the Motor Vehicles Act, which came into force with effect from 01.01.2019. Admittedly, in the case on hand, the accident had taken place on 09.12.2012, which is prior to the amendment. The benefit of the said amendment needs to be given to the Claimant, by applying the ratio laid down by this Court in C.M.A.No.1831/2016 and 1832/2016 and Cross Objection Nos. 77/2016 and 78/2016 dated 19.09.2019, even though the accident in the said case took place prior to the amendment, may not be correct.

9. As per the aforesaid amendment in II Schedule of 163(A) of Motor Vehicles Act, the compensation payable to the victims for permanent disability shall be Rs.5,00,000/- x percentage of disability as per Schedule I of the Employees Compensation Act 1923 (8 of 1983) that came into effect after the date of accident. Taking note of the same, the Tribunal has rightly awarded compensation towards Permanent Disability at Rs. 1,00,000/- taking note of the disability percentage @ 20% (20 % x 5000), which is reasonable and does not warrant interference.

10. Considering the nature of injuries sustained by the first Respondent, the quantum of compensation awarded by the Tribunal to the first Respondent under various heads, totalling a sum of Rs.1,00,000/-, cannot be considered to be excessive, as alleged by the Appellant/ Transport Corporation. For the foregoing reasons, this Court does not find any merit in this Appeal and accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.



11. The Appellant/Transport Corporation is directed to deposit the entire amount awarded by the Tribunal together with interest at 7.5% per annum from the date of the Claim Petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.827 of 2017 on the file of the Motor Accidents Claims Tribunal, the Special Sub Court (MCOP), Tiruvannamalai, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the 1st Respondent/Claimant through RTGS, within a period of two weeks.

s/d-
Assistant Registrar(CS V)

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Sub-Assistant Registrar

(arr)/(shk)

To:

1.The Special Subordinate Judge
Motor accident Claims Tribunal,
Tiruvannamalai

C.M.A. No.2513 of 2021

GPL (CO)
SP(11/11/2021)