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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.728 of 2021
and
C.M.P.No.4326 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division - I) Limited,
Coimbatore - 43.

.. Appellant

Vs.

Ranjithkumar

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.09.2018 made in M.C.O.P.No.686 of 2014 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the award dated 12.09.2018 made in M.C.O.P.No.686 of 2014 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

2.The appellant is the respondent in M.C.O.P.No.686 of 2014 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.16,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.01.2014.

3.According to respondent, on 29.01.2014 at about 19.30 hours, while he was traveling as passenger in the bus bearing Registration No.TN 33 N 1901 belonging to appellant-Transport Corporation from West to East direction on the Avinashi - Erode main road, near ICICI Bank, in front of Anbu Pazhamudir Nilayam, Avinashi, the driver of the bus drove the same in a rash and



negligent manner and due to the same, the respondent was thrown out of the bus and thus the accident occurred. In the accident, the respondent sustained grievous injuries at left shoulder, wrist, fingers and multiple injuries all over the body. Immediately after the accident, the respondent was taken to Revathi Hospital, Tirupur and then to PSG Hospital. Therefore, the respondent filed the said claim petition claiming a sum of Rs.16,00,000/- as compensation for the injuries sustained by him against the appellant-Transport Corporation.

4.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 slowly from Sathy to Tiruppur, near ICICI Bank, in front of Anbu Pazhamudir Nilayam, Avinashi, the respondent who was traveling in the bus suddenly came to the front foot board of the bus and jumped from the moving bus. In the F.I.R. also it is mentioned that the accident has occurred only when the respondent suddenly came to the front foot board of the moving bus, fell down and invited the accident. The accident has occurred only due to the negligence on the part of the respondent. F.I.R. is not a conclusive proof for fixing the negligence. In any event, contributory negligence has to be fixed on the part of the respondent. The appellant-Transport Corporation denied the age, avocation, income, nature of injuries, disability, medical bills and period of treatment taken by the respondent and stated that the quantum of compensation claimed by the respondent is highly excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined himself as P.W.1, one Johnbasha was examined as P.W.2 and Dr.Senthilkumar was examined as P.W.3 and 9 documents were marked as Exs.P1 to P9. On behalf of the appellant, one Vijayakumar, Driver of the bus belonging to appellant was examined as R.W.1 and no document was marked.

6.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.10,50,000/- as compensation to the respondent.

7.To set aside the award dated 12.09.2018 made in M.C.O.P.No.686 of 2014, the appellant-Transport Corporation has come out with the present appeal.

8.The learned counsel appearing for the appellant contended that the Tribunal ought not to have considered the evidence of



P.W.1, whose evidence has not been corroborated by any other independent witness. The Tribunal 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 failed to consider the evidence let in by the appellant and 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 appellant examined the driver of the bus as R.W.1 and proved that driver of the bus was not responsible for the accident and that the accident has occurred only due to the negligence on the part of the respondent. In any event, the Tribunal ought not to have accepted the partial permanent disability of the respondent at 47.5%. The respondent failed to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the monthly income fixed by the Tribunal at Rs.9,000/- is excessive. The respondent has not proved that he suffered functional disability and the multiplier method adopted by the Tribunal for awarding compensation towards loss of earning capacity is erroneous. The amounts awarded by the Tribunal towards loss of earning capacity, pain and sufferings, loss of amenities and attendant charges are highly excessive and prayed for setting aside the award passed by the Tribunal.

9. Heard the learned counsel appearing for the appellant-Transport Corporation and perused the entire materials on record.

10. It is the case of the respondent that while he was traveling as passenger in the bus bearing Registration No. TN 33 N 1901 belonging to appellant-Transport Corporation from West to East direction on the Avinashi - Erode main road, near ICICI Bank, in front of Anbu Pazhamudir Nilayam, Avinashi, the driver of the bus drove the same in a rash and negligent manner and due to the same, the respondent was thrown out of the bus and thus the accident occurred. To prove the said contention, the respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the bus belonging to appellant. On the other hand, it is the case of the appellant that when the driver of the bus was driving the bus slowly from Sathy to Tiruppur, near ICICI Bank, in front of Anbu Pazhamudir Nilayam, Avinashi, the respondent who was traveling in the bus suddenly came to the front foot board of the bus and jumped from the moving bus and invited the accident. To prove the said contention, the driver of the bus was examined as R.W.1. Further, R.W.1 has admitted that F.I.R., has been registered against him in Crime No.55/2014 in the Avinashi Police Station and he was enlarged on bail. Thereafter, departmental enquiry



was conducted for the alleged accident in the office of R.W.1. R.W.1 has not filed the said report before the Tribunal. The driver of the bus or the appellant have not lodged any complaint against the respondent. R.W.1 is an interested witness and the appellant has not examined any other eyewitness to prove their case that accident has occurred only due to negligence on the part of the respondent and has not filed any objection to the F.I.R., which was registered against the driver of the bus. The Tribunal considering the evidence of P.W.1, R.W.1, Ex.P1/F.I.R. and failure on the part of the appellant for not filing any objection to the F.I.R., not lodging any complaint against the respondent and not examining any other independent witness other than R.W.1, held that accident has occurred only due to the negligence on the part of the driver of the bus belonging to appellant-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

12.As far as quantum of compensation is concerned, it is the case of the respondent that in the accident he sustained grievous injuries at left shoulder, wrist, fingers and multiple injuries all over the body. He also underwent surgery and part of his intestine was cut off. To prove the nature of injuries and disability, the respondent examined P.W.3/Doctor. P.W.3/Doctor examined the respondent and certified that the respondent suffered 47.5% partial permanent disability and issued Exs.P7 to P9 to that effect. It is the further case of the respondent that at the time of accident he was aged 20 years, working as Production Incharge at Premier Company, Tirupur and was earning a sum of Rs.12,000/- per month. To prove the avocation and income, the respondent examined one Johnbasha, co-worker of the respondent as P.W.2. P.W.2 has deposed that the respondent was working as Production Incharge and was earning a sum of Rs.15,000/- per month. Except oral evidence, the respondent has not filed any document to prove the avocation and income. The Tribunal considering the year of accident and rise in cost of living, fixed a sum of Rs.9,000/- per month as notional income of the respondent. The Tribunal considering the evidence of P.W.3/Doctor, Exs.P7 to P9, nature of work done by the respondent, fixed the loss of earning capacity of the respondent at 45% and the same is proper. The respondent was aged 20 years at the time of accident. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], rightly applied multiplier '18' and awarded a sum of Rs.8,74,800/- as compensation towards loss of earning capacity. Considering the nature of injuries, period of treatment taken and the disability suffered by the respondent as per Exs.P3 to P6, the amounts awarded by the Tribunal towards medical bills, attendant charges, extra



nourishment and transportation are not excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.10,50,000/- as compensation to the respondent, which is not excessive warranting interference by this Court.

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13. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.10,50,000/- 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.686 of 2014 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur. 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. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

krk

To

1. The II Additional District Judge,
Motor Accidents Claims Tribunal,
Tiruppur.
2. The Section Officer,
VR Section,
High Court, Madras.

+1CC to Mr.K.J.Sivakumar, Advocate, Sr.No.15689

C.M.A.No.728 of 2021

SSN (CO)

K.RK. (01.10.2021)