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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.767 OF 2021

AND

C.M.P.NO.4707 OF 2021

The Managing Director,
Tamil Nadu State Transport Corporation,
(VPM), Villupuram. .. Appellant/Respondent

Vs.

Lakshmi .. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.12.2019 passed in M.C.O.P.No.113 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.C.S.K.Sathish

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 16.12.2019 made in M.C.O.P.No.113 of 2018 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.113 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Krishnagiri. The respondent filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 05.11.2017.

4.According to respondent, on 05.11.2017 at about 00.45 hours, while she was travelling as passenger in the bus bearing Registration No.TN-32-N-3073 belonging to appellant from Chennai to Vellore on the Chennai - Vellore NH near Kanchipuram Vellai



Gate centre bridge, the driver of the bus belonging to the appellant drove the same in a rash and negligent manner and dashed against an unknown lorry and caused the accident. In the accident, the respondent sustained grievous injuries on her right leg and sustained fractures of both bones in the right leg. Immediately after the accident, the respondent was taken to Government Hospital, Kanchipuram and was admitted as inpatient. Thereafter, she got herself discharged from the said Hospital and admitted in Uma Rani Hospital, Krishnangiri. Therefore, the respondent filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her against the appellant-Transport Corporation.

5.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondent. The appellant denied the manner of the accident and stated that the driver of the TNSTC bus drove the same slowly, cautiously following all the rules of the road, at that time a unknown lorry which was proceeding in front of the bus suddenly turned the vehicle and came into the middle of the road. On seeing this, the driver of the bus applied sudden break and almost stopped the bus. Due to sudden and careless act of driver of the unknown lorry, the accident took place and the respondent sustained simple injuries only and she has not suffered any permanent disability or partial disability. The entire negligence is on the driver of the lorry. Hence, the appellant is not liable to pay any compensation to the respondent. The appellant also denied the age, occupation, income, injuries, period of treatment and medical expenses incurred by the respondent. 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 herself as P.W.1 and 8 documents were marked as Exs.P1 to P8. On behalf of the appellant, the driver of the bus belonging to appellant-Transport Corporation was examined as R.W.1 and no document was marked. The disability certificate issued by the Medical Board, Krishnagiri District was marked as Ex.C1.

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.4,82,689/- as compensation to the respondent.

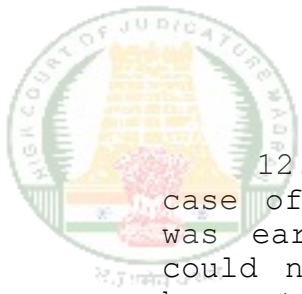
8.Against the said award dated 16.12.2019 made in M.C.O.P.No.113 of 2018, the appellant-Transport Corporation has come out with the present appeal.



9. The learned counsel appearing for the appellant contended that 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 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 appellant examined the driver of the bus 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 driver of the unknown lorry. The Tribunal failed to see that the investigation is pending and final report is not filed. In any event, the Tribunal failed to consider the oral and documentary evidence. The respondent failed to prove that she is a Cloth merchant and was earning a sum of Rs.10,000/- per month. In the absence of any material document, the Tribunal erroneously fixed the monthly income of the respondent at Rs.8,500/-, applied multiplier method and awarded compensation for loss of earning capacity. The compensation awarded by the Tribunal towards social amenities is highly excessive. The total compensation awarded by the Tribunal at Rs.4,82,689/- is highly 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 while she was travelling as passenger in the bus belonging to appellant from Chennai to Vellore on the Chennai - Vellore NH near Kanchipuram Vellai Gate centre bridge, the driver of the bus belonging to the appellant drove the same in a rash and negligent manner and dashed against an unknown lorry and caused the accident. To prove her case, the respondent examined herself as P.W.1 and marked the F.I.R. which was registered against the driver of the bus as Ex.P1. On the other hand, it is the case of the appellant that the accident occurred only due to the negligence of the driver of the lorry who suddenly turned the vehicle and came into the middle of the road and caused the accident. To prove their case, the appellant examined the driver of the bus as R.W.1. R.W.1 has neither filed the registration number of the lorry nor the name of the driver of the lorry. The Tribunal considering the evidence of P.W.1, R.W.1, Ex.P1 - FIR and judgment of this Court reported in 2014 (1) TNMAC 156 [Muthu vs. Managing Director, TNSTC], held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant. 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 she was doing Cloth Business and was earning Rs.10,000/- per month. Due to the injuries, she could not continue her business as she was doing earlier. She has not produced any document to prove her avocation and income. In the absence of any material evidence to prove the income, the Tribunal fixed a sum of Rs.8,500/- as notional income. The accident is of the year 2017. Even for a house wife notional income is fixed more than Rs.10,000/- per month. In this case, the Tribunal has fixed Rs.8,500/- per month as notional income of the respondent, which is not excessive. Further the respondent was referred to Medical Board, Krishnagiri. The Medical Board, Krishnagiri District examined the appellant and certified that respondent suffered 20% disability and issued Ex.C1/disability certificate to that effect. The Tribunal considering the disability certificate issued by the Medical Board, observing the respondent who has appeared before the Court and deposed that she is facing difficulty in doing her daily work and lost earning capacity due to the 20% disability, adopted multiplier method for awarding compensation towards loss of earning capacity. The Tribunal considering the injuries, treatment taken and medical bills awarded a sum of Rs.38,089/- towards medical bills which is not excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.4,82,689/- as compensation to the respondent and the same is not excessive warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.4,82,689/- 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.113 of 2018 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. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar(R)

//True Copy//

Sub Assistant Registrar

dsa



To

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

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+1cc to Mr.C.S.K.Sathish, Advocate, S.R.No.16345

C.M.A.No.767 of 2021

PL (CO)
CS/17/11/2021