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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1229 OF 2021

AND

C.M.P.NO.6214 OF 2021

The Managing Director,
Tamil Nadu State Transport Corporation,
(Kancheepuram Division),
Villupuram.

.. Appellant/Respondent

Vs.

Minor. Raghul

.. Respondent/Petitioner

(Represented by his Father, Elumalai)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.02.2018 made in M.C.O.P.No.797 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai.

For Appellant : Mr.K.J.Sivakumar

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 13.02.2018 made in M.C.O.P.No.797 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai.

3.The appellant is the respondent in M.C.O.P.No.797 of 2017 on the file of the Motor Accidents Claims Tribunal,



Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai. The respondent filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.11.2016.

4. According to respondent, on 07.11.2016 at about 08.45 hours, while he was traveling as pillion rider in the motorcycle bearing Registration No.TN 20 AX 3632 from East to West on the Utiramerur - Vandawash Main Road, opposite to Elumalayan Kalyana Mandapam, Manambathi, Uthiramerur Taluk, the driver of the bearing Registration No.TN 21 N 1651 belonging to appellant-Transport Corporation, drove the same in a rash and negligent manner from the opposite direction endangering public safety, came to the wrong side of the road and dashed against the motorcycle in which the respondent was traveling as pillion rider and caused the accident. In the accident, the respondent sustained multifarious fractures and injuries. Therefore, he filed the said claim petition claiming a sum of Rs.30,00,000/- 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, the driver of the bus belonging to appellant was driving the same at a moderate speed by observing the traffic rules from Kancheepuram Bus Stand to Alandur. At about 08.45 A.M., while driving near Elumalayan Kalyana Mandapam, Manambathi, the rider of the motorcycle bearing Registration No.TN 20 AX 3632 in which the respondent was traveling as pillion rider, without noticing the vehicles which was coming in the opposite direction, overtook the Adithya School vehicle, that was stopped for boarding the school students and dashed on the front right side of the bus belonging to appellant-Transport Corporation and invited the accident. Both the rider and pillion rider of the motorcycle were minors only aged 16 years at the time of accident and they were not wearing helmet at the time of accident. In the accident, the rider of the motorcycle died on the spot and the pillion rider sustained injuries. The rider of the motorcycle was not possessing valid driving license at the time of accident. There was no negligence on the part of the driver of the bus and the accident has occurred only due to the negligence on the part of



the rider of the motorcycle. Hence, the appellant is not liable to pay any compensation to the respondent. The owner and insurer of the motorcycle bearing Registration No.TN 20 AX 3632 have to be impleaded as necessary parties in the claim petition. The respondent has to produce the insurance policy and Registration Certificate of the motorcycle. The appellant-Transport Corporation denied the age, nature of injuries, disability and period of treatment taken by the respondent. The quantum of compensation claimed by respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the father of the respondent viz., C.Elumalai was examined as P.W.1, one Sekar, eyewitness to the accident was examined as P.W.2 and Dr.Amarnath was examined as P.W.3 and 10 documents were marked as Exs.P1 to P10. The appellant-Transport Corporation examined the driver of the bus as R.W.1 and marked two photographs as Exs.R1 & R2.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred 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.7,75,800/- as compensation to the respondent.

8.To set aside the award dated 13.02.2018 made in M.C.O.P.No.797 of 2017, the appellant-Transport Corporation has come out with the present appeal.

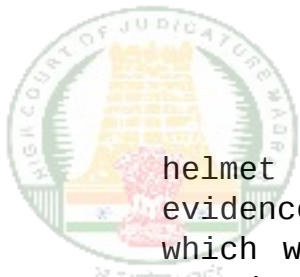
9.The learned counsel appearing for the appellant contended that the Tribunal ought not to have held that mere registering of F.I.R. is more enough for fixing negligence on the part of the driver of the bus. The Tribunal erroneously fixed negligence on the driver of the bus merely relying on the F.I.R. 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 Tribunal failed to consider the evidence of R.W.1, who is the driver of the bus. The respondent failed to prove his age, avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.7,000/- per month fixed by the Tribunal as notional income of the respondent is excessive. The Tribunal ought not to have taken the percentage of partial permanent disability of the



respondent at 40% as the same is on the higher side. The amounts awarded by the Tribunal towards permanent disability, loss of amenities, loss of participation in sports and games are 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. It is the case of the respondent that while he was traveling as pillion rider in the motorcycle bearing Registration No. TN 20 AX 3632 from East to West on the Utiramerur - Vandawash Main Road, opposite to Elumalayan Kalyana Mandapam, Manambathi, Uthiramerur Taluk, the driver of the bearing Registration No. TN 21 N 1651 belonging to appellant-Transport Corporation, drove the same in a rash and negligent manner from the opposite direction endangering public safety, came to the wrong side of the road and dashed against the motorcycle in which the respondent was traveling as pillion rider and caused the accident. To prove the said contention, the father of the respondent viz., C. Elumalai was examined as P.W.1, one Sekar, eyewitness to the accident was examined as P.W.2 and marked F.I.R., as Ex.P1, which was registered against the driver of the bus and other documents. On the other hand, it is the case of the appellant-Transport Corporation that while the driver of the bus was driving the same near Elumalayan Kalyana Mandapam, Manambathi, the rider of the motorcycle bearing Registration No. TN 20 AX 3632 in which the respondent was traveling as pillion rider, without noticing the vehicles which was coming in the opposite direction, overtook the Adithya School vehicle, that was stopped for boarding the school students and dashed on the front right side of the bus belonging to appellant-Transport Corporation and invited the accident. To prove the said contention, the driver of the bus was examined as R.W.1. R.W.1 is an interested witness and the appellant has not examined any other independent witness to prove that the accident has occurred only due to the negligence on the part of the rider of the motorcycle. Further, R.W.1 or the appellant has not filed any objection to F.I.R., which was registered against the driver of the bus and not lodged any complaint against the rider of the motorcycle and also not proved by acceptable evidence that the rider and pillion rider were not wearing



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helmet at the time of accident. The Tribunal considering the evidence of P.W.1, P.W.2, R.W.1 and contents of Ex.P1/F.I.R., which was registered against the driver of the bus and failure on the part of the appellant for not lodging any complaint against the rider of the motorcycle and not filing any objection to F.I.R., held that the accident has occurred only due to rash and negligent driving by 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 multiple compound and comminuted fracture in the middle of right leg thigh bone for which plate & screws fixed. Fracture in both hands wrist, severe injury in the left eye leading to blurred vision, severe injury in the forehead leading to concussion of brain and blood clotting, dislocation of bone and nerve injury in left leg knee, multiple internal & external injuries all over the body. To prove the nature of injuries and disability suffered by him, he examined Dr.Amarnath as P.W.3. P.W.3/Doctor examined the respondent and certified that he suffered 45% disability and issued Ex.P9/disability certificate to that effect. P.W.2/Doctor further deposed that the respondent is not able to work freely, his hip movement is reduced and he cannot squat, wrist bones were crushed and the wrist were malunited. The Tribunal considering the evidence of P.W.3/Doctor and Ex.P9/disability certificate, fixed the percentage of disability of the respondent at 40% and awarded a sum of Rs.1,00,000/- (Rs.2,500/- X 40% of disability) for 40% disability at the rate of Rs.2,500/- per percentage of disability and the same is not excessive. It is the further case of the respondent that at the time of accident, he was aged 17 years studying XI standard at Manambathi Higher Secondary School, Uthiramerur Taluk, Kancheepuram District. The Tribunal considering the evidence of P.W.3/Doctor and the age of the respondent, fixed the loss of earning capacity of the respondent at 40% and awarded a sum of Rs.6,04,800/- for loss of earning capacity by adopting multiplier method and the same is not excessive. From the materials on record, it is seen that immediately after the accident, the respondent was given first aid treatment at Government Hospital, Chengalpet and thereafter he was shifted to Government General Hospital, Chennai, where he has taken treatment as inpatient from 07.11.2016 to 01.12.2016.



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Considering the nature of injuries, period of treatment taken, age and disability suffered by the respondent, the amounts awarded by the Tribunal under other heads are not excessive warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.7,75,800/- 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.797 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai. On such deposit made by the appellant, the Tribunal is directed to deposit the said amount in any one of the Nationalized Banks, till the minor respondent attains majority. On such deposit, the father of the minor respondent, viz., C.Elumalai, is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondent. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(J)

// True Copy //

Sub Assistant Registrar

krk

To

1. The Principal Special Judge,
Motor Accidents Claims Tribunal,
Special Court under E.C. & NDPS Act,
Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.20016

C.M.A.No.1229 of 2021

AK-II(CO)

RLP(11/11/2021)