



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3593 of 2019
and
C.M.P.No.20782 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division) Limited,
Having Office at 37, Mettupalayam Road,
Coimbatore. .. Appellant/2nd Respondent

Vs.

1.N.Ajithkumar ...Respondent/Claimant
2.V.K.Prabakaran (Driver) ..2nd Respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.10.2018 made in M.C.O.P.No.365 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode.

For Appellant : Mr.K.J.Sivakumar

For R1 : Mr.R.Nalliyappan

For R2 : Not ready in notice

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 05.10.2018 made in M.C.O.P.No.365 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode.

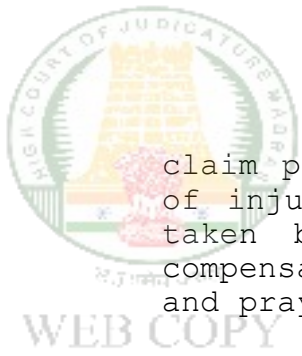
3.The appellant is the 2nd respondent in M.C.O.P.No.365 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode. The 1st respondent filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.09.2016.



4. According to 1st respondent, on 14.09.2016 at about 04.30 P.M., while the 1st respondent was riding in a motorcycle bearing Registration No.TN 38 BX 4932 on the extreme left side of the Annadasampalayam - Sirumugai road from East to West direction in a slow speed by adhering the road traffic rules near Annadasampalayam cremation ground, the driver of the bus bearing Registration No.TN 38 N 1271 belonging to appellant, drove the bus from the opposite direction in a rash and negligent manner without adhering the road traffic rules, attempted to overtake the vehicle which was proceeding in front of the bus, resulted in entering into wrong side of the road and dashed against the motorcycle rode by the 1st respondent and caused the accident. In the accident, the 1st respondent fell down from the motorcycle and sustained bone fracture and grievous injuries. Immediately after the accident, the 1st respondent was taken to Srinivas Hospital, Sirumugai. Thereafter the 1st respondent was referred to Coimbatore Medical College Hospital, Coimbatore, where he took treatment as inpatient from 14.09.2016 to 16.09.2016. Further the 1st respondent was admitted at One Care Medical Centre, Coimbatore and he took treatment as inpatient from 16.09.2016 to 21.09.2016. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him against the appellant-Transport Corporation.

5. The 2nd respondent-driver of the bus belonging to appellant-Transport Corporation remained exparte before the Tribunal.

6. The appellant-Transport Corporation filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, at the time of accident, the driver of the bus drove the same very slowly and carefully on the left side of the road by observing the road traffic rules. At about 04.40 P.M., while nearing Annathasampalayam burial ground, the 1st respondent rode his motorcycle in a rash and negligent manner at a hectic speed, suddenly turned into the centre of the road and slipped on the tar road. On seeing this, the 2nd respondent-driver of the bus sounded horn, applied sudden brake and stopped the bus to the extreme left side of the road to avoid the accident. In spite of best efforts taken by the 2nd respondent, the 1st respondent fell down from the motorcycle, slipped on the road and hit on the rear right side of the bus, invited the accident and sustained injuries. Therefore, the accident has occurred only due to negligence on the part of the 1st respondent. Hence, the appellant is not liable to pay any compensation to the 1st respondent. Based on a false complaint, the case was registered against the 2nd respondent-driver of the bus. The owner and insurer of the motorcycle rode by the 1st respondent have to be impleaded as necessary parties in the



claim petition. The appellant denied the age, avocation, nature of injuries, disability, medical bills and period of treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

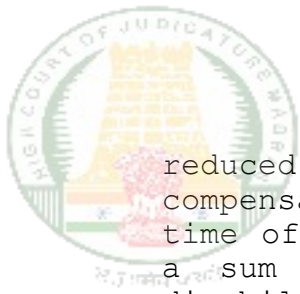
7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and 18 documents were marked as Exs.P1 to P18. On behalf of the appellant, the 2nd respondent, driver of the bus belonging to appellant-Transport Corporation was examined as R.W.1 and no documentary evidence was let in. The disability certificate issued by the District Medical Board, Erode was marked as Ex.C1.

8. 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.5,56,800/- as compensation to the 1st respondent.

9. Against the said award dated 05.10.2018 made in M.C.O.P.No.365 of 2017, the appellant-Transport Corporation has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the Tribunal erred in accepting the evidence of P.W.1, whose evidence was not corroborated by any other independent witness. The Tribunal ought not to have fixed entire negligence on the part of the 2nd respondent-driver of the bus based on the F.I.R. that was registered against the driver of the bus. The 1st 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.12,800/- is excessive. The 1st 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 disability and pain and sufferings are highly excessive and prayed for setting aside the award passed by the Tribunal.

11. Per contra, the learned counsel appearing for the 1st respondent contended that the Tribunal considering the evidence of P.W.1 and Ex.P1/F.I.R., which was registered against the 2nd respondent-driver of the bus, held that accident has occurred only due to rash and negligent driving by the 2nd respondent-driver of the bus. There is no error in the said finding of the Tribunal. In the accident, the 1st respondent sustained grievous injuries in neck and femur fracture of right hip. The District Medical Board, Erode examined the 1st respondent and certified that 1st respondent suffered 30% disability. But the Tribunal



reduced the percentage of disability to 10% and awarded compensation only for 10% of loss of earning capacity. At the time of accident, the 1st respondent was a Mason and was earning a sum of Rs.20,000/- per month. Due to the injuries and disability suffered by him in the accident, he could not continue his avocation as Mason. Hence, the Tribunal ought to have awarded compensation for 100% loss of earning capacity. The compensation awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant-Transport Corporation as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13. From the materials available on record, it is seen that it is the case of the 1st respondent that accident has occurred only due to rash and negligent driving by the 2nd respondent-driver of the bus belonging to appellant-Transport Corporation. To prove the said contention, the 1st respondent examined himself as P.W.1 and marked 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-Transport Corporation that the 1st respondent only rode his motorcycle in a rash and negligent manner at a hectic speed, turned into the centre of the road, slipped on the road and hit on the rear right side of the bus, invited the accident and sustained injuries. To prove the said contention, the appellant examined the 2nd respondent-driver of the bus as R.W.1. R.W.1 in his chief examination has deposed that the 1st respondent rode the motorcycle by wearing headset without noticing the oncoming bus in a rash and negligent manner, dashed on the front right of the bus, fell down and invited the accident. The deposition of R.W.1 in his chief examination is contrary to the averments made by the appellant in the counter statement. Further in Ex.P5/MVI report of the bus bearing Registration No.TN 38 N 1271, it was mentioned that "FR mud guard damaged, FL bumper damaged" and there is no mention about the damage of rear side of the bus as mentioned in the counter statement. The appellant-Transport Corporation or the driver of the bus did not lodge any complaint against the 1st respondent or did not file 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, Ex.P1/F.I.R., the contradictory statement of R.W.1 in chief examination and failure on the part of the appellant for not filing any objection to F.I.R. and not lodging any complaint against the 1st respondent, 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.



14.As far as quantum of compensation is concerned, it is the case of the 1st respondent that in the accident he sustained grievous injuries in neck and femur fracture of right hip. The District Medical Board, Erode examined the 1st respondent and certified that 1st respondent suffered 30% disability and issued Ex.C1/disability certificate to that effect. The Tribunal considering the Gazette notification issued by the Ministry of Social Justice and Empowerment, Government of India dated 13.06.2001, nature of injuries and disability suffered by the 1st respondent and the nature of work done by the 1st respondent, fixed functional disability of the 1st respondent at 10% and the same is proper. The 1st respondent claimed that he was a Mason and was earning a sum of Rs.20,000/- per month at the time of accident. The appellant has not produced any material evidence to prove his avocation and income. The Tribunal considering the judgment of Division Bench of this Court passed in C.M.A.No.2895 of 2017 dated 06.07.2018 in the case of Royal Sundaram Alliance Vs. E.Sulochena, fixed monthly income of the 1st respondent at Rs.12,800/- per month and the same is not excessive. The Tribunal granted 40% enhancement towards future prospects, adopted multiplier '18' and awarded a sum of Rs.3,87,000/- as compensation to the 1st respondent for 10% loss of earning capacity.

15.From the materials on record, it is seen that immediately after the accident, the 1st respondent was taken to Srinivas Hospital, Sirumugai. Thereafter he was referred to Coimbatore Medical College Hospital, Coimbatore, where he took treatment as inpatient from 14.09.2016 to 16.09.2016. Further the 1st respondent was admitted at One Care Medical Centre, Coimbatore and he took treatment as inpatient from 16.09.2016 to 21.09.2016. The Tribunal considering the nature of injuries, disability, medical bills and period of treatment taken, awarded a sum of Rs.50,000/- towards pain and sufferings and Rs.82,700/- towards medical expenses. The Tribunal considering the entire materials on record, has awarded a sum of Rs.5,56,800/- as compensation to the 1st respondent and the same is not excessive warranting interference by this Court.

16.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.5,56,800/- awarded by the Tribunal as compensation to the 1st 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.365 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode. On such deposit, the 1st 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-II)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Erode.

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.5279

C.M.A.No.3593 of 2019

RSV(CO)
CB(04/10/2021)