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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.4182 of 2019

and

C.M.P.No.23604 of 2019

The Managing Director,
Andhrapradesh State Road Transport Corporation Limited,
Musheerabad, Hyderabad.

.. Appellant/Respondent

Vs.

Jalenthiran

.. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.12.2017 made in M.C.O.P.No.272 of 2016 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Vellore.

For Appellant : Ms.G.V.Shoba

For Respondent : Mr.C.Prabakaran

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid" mode.)

This Civil Miscellaneous Appeal has been filed to set aside the award dated 21.12.2017 made in M.C.O.P.No.272 of 2016 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Vellore.

2.The appellant is the respondent in M.C.O.P.No.272 of 2016 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Vellore. The respondent filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.03.2013.



3. According to respondent, on 12.03.2013 at about 07.25 hours, while he was riding the two wheeler near Chirvada Tank Bund Channel, K.V.Puram Village, the driver of the bus bearing Registration No.AP 10 Z 7182 belonging to appellant-Transport Corporation, drove the same in a rash and negligent manner and dashed against the respondent and caused the accident. In the accident, the respondent sustained fracture on the right and left leg, fracture on right hand and multiple injuries all over the body. Immediately after the accident, the respondent was admitted in S.M.Hospital, Ranipet. Therefore, the respondent filed the said claim petition claiming a sum of Rs.10,00,000/- 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, the driver of the bus, drove the same in a careful manner and on seeing the respondent, who was riding the motorcycle in a rash and negligent manner at a high speed, he stopped the bus. But, the respondent lost his control and balance over the motorcycle, came and dashed against the stationed bus, fell down and sustained injuries. Therefore, the accident has occurred only due to the negligence on the part of the respondent and there is no negligence on the part of the driver of the bus. Hence, the appellant is not liable to pay any compensation to 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 and 5 documents were marked as Exs.P1 to P5. On behalf of the appellant, one Vibhishna Naidu, Driver of the bus belonging to appellant was examined as R.W.1 and no document was marked. The disability certificate of the respondent was marked as Ex.C1.

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 and directed the appellant to pay a sum of Rs.2,84,836/- as compensation to the respondent.

7. To set aside the award dated 21.12.2017 made in M.C.O.P.No.272 of 2016, the appellant-Transport Corporation has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that the Tribunal came to the wrong conclusion that the driver

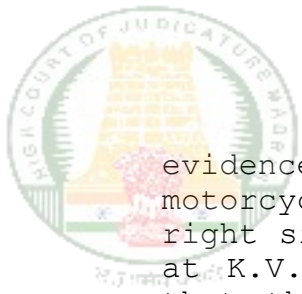


of the bus belonging to appellant was responsible to the accident only based on the evidence of P.W.1 and Ex.P1/F.I.R., which was registered against him. The Tribunal failed to consider the evidence of R.W.1-driver of the bus, whose evidence proves that the accident has occurred only due to the negligence of the respondent. The accident has occurred only due to the negligence of the respondent and hence, the insurer of the motorcycle alone is liable to pay the compensation. The Tribunal ought to have dismissed the claim petition on the ground that the owner and insurer of the motorcycle driven by the respondent were not impleaded as necessary parties in the claim petition. There are two vehicles involved in the accident and hence, contributory negligence has to be fixed on the part of the respondent. The respondent who was in a drunken mood has invited the accident and there is no negligence on the part of the driver of the bus. In the absence of any documentary evidence with regard to avocation and income, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the respondent is excessive. The Tribunal ought to have fixed a sum of Rs.3,500/- per month as notional income of the respondent and awarded compensation. A sum of Rs.75,000/- awarded by the Tribunal for 25% disability is highly excessive. The amounts awarded by the Tribunal under other heads are highly excessive and prayed for setting aside the award passed by the Tribunal.

9.The learned counsel appearing for the respondent made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

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

11.It is the case of the respondent that while he was riding the two wheeler near Chirvada Tank Bund Channel, K.V.Puram Village, the driver of the bus bearing Registration No.AP 10 Z 7182 belonging to appellant-Transport Corporation, drove the same in a rash and negligent manner and dashed against the respondent and caused the accident. To prove the said contention, the respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1 and Final Report as Ex.P2 which was registered against the driver of the bus belonging to appellant. On the other hand, it is the case of the appellant that the driver of the bus drove the same in a careful manner and on seeing the respondent, who was riding the motorcycle in a rash and negligent manner at a high speed, he stopped the bus. But, the respondent lost his control and balance over the motorcycle, came and dashed against the stationed bus, fell down, sustained injuries and invited the accident. To prove the said contention, the driver of the bus examined himself as R.W.1. R.W.1 in his



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evidence has deposed that the respondent only drove the motorcycle in a rash and negligent manner and dashed on the right side headlight of the bus, which was parked near 'S' Curve at K.V.Nagar. Further, R.W.1, in cross examination has deposed that the Police have registered a case and filed charge sheet against him. He further deposed that departmental proceedings were also initiated against him. The appellant has neither filed the rough sketch nor filed the Motor Vehicle Inspector's Report to prove their case that the accident has occurred only due to the negligence on the part of the respondent. The appellant has not proved by acceptable evidence that the respondent was in a drunken mood at the time of accident. Further, the appellant has not lodged any complaint against the respondent and also 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, Exs.P1 & P2, failure on the part of the appellant for not filing any rough sketch, Motor Vehicle Inspector's Report, objection to the F.I.R. and not lodging any complaint against the respondent, held that the 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 fracture on right and left leg, fracture on right hand and multiple injuries all over the body. To prove the nature of injuries and disability, he marked the wound certificate as Ex.P3 and the disability certificate issued by the Medical Board, Vellore as Ex.C1. The Tribunal considering Ex.C1/disability certificate, has awarded a sum of Rs.75,000/- for 25% disability at the rate of Rs.3,000/- per percentage of disability and the same is not excessive. The respondent in the claim petition has claimed that at the time of accident, he was aged 49 years, doing Retail Cloth Business and was earning a sum of Rs.25,000/- 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.6,000/- per month as notional income of the respondent and awarded a sum of Rs.36,000/- towards loss of income for six months and the same is just and reasonable. The respondent has taken treatment in the Scudder Memorial Hospital, Ranipet as inpatient from 12.03.2013 to 27.03.2013 and underwent surgery on 18.03.2013. Considering the nature of injuries, period of treatment taken and the disability suffered by the respondent, the amounts awarded by the Tribunal towards medical bills, pain and sufferings, attendant charges, extra nourishment and transportation are not excessive. The Tribunal considering the entire materials on record, has awarded



a sum of Rs.2,84,836/- as compensation to the respondent, which is not excessive warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.2,84,836/- 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.272 of 2016 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Vellore. 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

//True Copy//

Sub Assistant Registrar

krk

To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Vellore.

+1cc to M/s.G.V.Shoba, Advocate, S.R.No.30721

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.30720

C.M.A.No.4182 of 2019

GPL (CO)
SU (25/10/2021)