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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.04.2021

Coram:

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A. No. 4129 of 2019
and
C.M.P. No. 23346 of 2019

The Managing Director,
State Express Transport
Corporation Tamilnadu Ltd.,
Chennai.

..Appellant

Versus

Rajaperumal

.. Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the order and decree in M.C.O.P.No.28 of 2016, dated 06.10.2018 on the file of the Motor Accidents Claims Tribunal / II Additional District and Sessions Judge's Court, Chidambaram.

For Appellant : Mr.K.Kathiresan

For Respondent : Mr.M.Murugan

J U D G M E N T

(The Judgment of the Court was delivered by R.Subbiah, J.,)

This Civil Miscellaneous Appeal has been filed by the appellant/ Transport Corporation questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal / II Additional District and Sessions Judge's Court, Chidambaram vide judgment and decree made in M.C.O.P.No.28 of 2016 dated 06.10.2018.

2. The brief facts of the case are as follows:

The respondent was working as a Mason in Kerala. On 08.11.2015, at about 11.45 p.m, when he was trying to board the appellant/Transport Corporation Bus bearing Registration No.TN01/AN0939, which has to proceed from Palakkad KSRTC Bus Stand to Salem, the driver of the appellant Bus started the Bus in a rash and negligent manner without noticing the respondent boarding the bus. As a result of the departure of the bus in the manner afore-stated, the respondent/claimant fell down and the wheels of the Bus ran over his legs and he sustained severe injuries on his legs and back. Immediately, he was admitted in the New Medical College Hospital, Thrissur for treatment, where



he took treatment as inpatient from 09.11.2015 to 11.11.2015. During the course of treatment, as the wheels of the bus ran over the legs of the respondent/claimant, the bones of his legs and feet were crushed which necessitated amputation on his left leg till thigh. Further, except his bigger toe, all the other four toes, were cut and skin was grafted from knee to foot on his right leg. There was also a huge abrasion on his back. The respondent, claiming that the driver of the bus is responsible for the injuries he sustained, has filed a Claim Petition in M.C.O.P.No.28 of 2016 against the appellant/Transport Corporation, claiming a sum of Rs.50,00,000/- as compensation.

3. The appellant/Transport Corporation filed a counter statement, wherein, they denied the averments made by the respondent/claimant in Claim Petition by stating as follows:

(i) The alleged accident had occurred only due to the carelessness of the respondent/claimant and no negligence could be attributed towards the driver of the appellant/Transport Corporation Bus.

(ii) At the time of accident, the respondent/claimant was under the influence of alcohol and the accident had occurred only when he attempted to get into the running Bus and fell on the rear left wheel of the Bus.

4. Before the Tribunal, in order to prove the averments in the claim petition, the respondent examined himself as PW1 and 24 documents were marked as Exs.P-1 to P-24 on his side. On the side of the appellant/Transport Corporation, a witness was examined as R.W.1, but no document was marked as exhibit. One document was marked as Court Exhibit viz., Ex.C1.

5. On an appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the finding that the accident had occurred due to the negligence of the driver of appellant/Transport Corporation Bus. By arriving at such a conclusion, the Tribunal directed the appellant/Transport Corporation to pay a sum of Rs.30,00,400/- as compensation to the respondent/claimant. The break-up details of the compensation awarded by the Tribunal are as follows:

(i) Loss of Income	-	Rs.25,70,400/-
(ii) Attender Charges	-	Rs. 1,00,000/-
(iii) Loss of Dependency	-	Rs. 1,00,000/-
(iv) Loss of Amenities	-	Rs. 1,00,000/-
(v) Future Medical Expenses	-	Rs. 50,000/-
(vi) Transportation Expenses	-	Rs. 50,000/-
(vii) Extra Nourishment	-	Rs. 30,000/-

Total Compensation

- Rs.30,00,400/-



6. Mr.K.Kathiresan, learned counsel for the appellant/Transport Corporation submitted that the accident had occurred due to the carelessness of the respondent himself and there was no negligence on the part of the driver of the appellant/Transport Corporation Bus. Even though the case was registered against the driver of the Bus in Crime No.1824 of 2015, it will not ipso-facto establish negligence on the part of the driver for the purpose of awarding compensation to the respondent. He further submitted that though R.W.1, driver of the Bus, had categorically stated about the negligent act of the victim respondent in his evidence, the Tribunal, simply relying on the evidence of P.W.1/respondent and Ex.P1, First Information Report (FIR), came to the conclusion that the accident occurred due to the negligence of the driver of the Bus.

6.1. He would also submit that the amount of compensation awarded by the Tribunal is onerous and not befitting to the earnings of the respondent. In the absence of any Documentary Proof regarding the monthly income of the respondent, the Tribunal ought to have fixed his notional income at Rs.5,000/-, but instead, the Tribunal fixed the monthly income of the respondent/claimant as Rs.9,000/-. Also considering the age, work and injuries sustained by the victim respondent, the Tribunal took the disability as 100% and applied the multiplier 17. Finally, it awarded a sum of Rs.25,70,400/- towards Loss of Income. He therefore prayed that the said sum of Rs.25,70,400/- awarded towards Loss of Income has to be reduced.

7. We have heard the learned counsel on either side and perused the materials available on record.

8. As far as this case is concerned, the Tribunal fixed the negligence on the part of the driver of the appellant/Transport Corporation Bus. Per contra, the stand taken by the counsel for the appellant/Transport Corporation is that the accident had occurred due to the negligence of the respondent/claimant, who was under the influence of alcohol and attempted to board the Bus and fell on the rear wheel of the Bus.

9. The learned counsel for the appellant Corporation submitted that at the time of accident, the deceased was under the influence of alcohol and it is, he, who was negligent in boarding the bus. Even though RW1 has merely stated that the respondent was under the influence of alcohol, but it was not established in a manner known to law. Furthermore, the first information report in Crime No. 1824 of 2015 was registered only against the driver of the appellant/Transport Corporation. When that being the position, we are of the opinion that there is no need to interfere with the finding of the Tribunal with regard to the fixation of negligence.

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10. So far as quantum of compensation is concerned, it is evident from the records that, due to the injuries sustained in



the accident, the respondent's left leg till his thigh was amputated. Further, except his bigger toe, he lost all the four toes on his right leg. Thus, the injuries sustained by the respondent had disabled him to take up any further employment for his livelihood. Therefore, at the outset, we are of the view that the Tribunal is right in taking the disability of the respondent at 100% for the purpose of awarding compensation by applying multiplier.

11. At the time of accident, the respondent was 28 years old. The accident had taken place on 18.11.2015. The Tribunal fixed the notional income of the respondent, as a Mason could earn, at Rs.9,000/-. This, in our view, is wholly justifiable. A person of the age of the respondent, as a Mason, could easily earn at-least a sum of Rs.12,000/- during the year 2015. Taking note of the prevailing cost of living and other attendant facts and circumstances, the fixation of Rs.9000/- per month as notional income cannot be said to be on the higher side. The Tribunal also added 40% of the monthly income of the deceased towards future prospectus to arrive at a sum of Rs.12,600/- (9,000/- x 40% = 3,600/-). Ultimately, the Tribunal awarded a sum of Rs.25,70,400/- as Loss of Income. In our opinion, such amount awarded by the Tribunal under the head Loss of Income is befitting the age, income and earning capacity of the respondent. In other words, the amount awarded by the Tribunal is just and reasonable and we decline to interfere with the same.

12. At the same time, we find that a sum of Rs.1,00,000/- awarded by the Tribunal towards Attender Charges is exorbitant and it is required to be reduced. Therefore, we reduce it to Rs.50,000/-. Except this, the amount awarded towards all other heads are fair and reasonable. The break-up details of the modified amount of compensation awarded by this Court are as follows:

(i) Loss of Income	-	Rs.25,70,400/-
(ii) Attender Charges	-	Rs. 50,000/-
(iii) Loss of Dependency	-	Rs. 1,00,000/-
(iv) Loss of Amenities	-	Rs. 1,00,000/-
(v) Future Medical Expenses	-	Rs. 50,000/-
(vi) Transportation Expenses	-	Rs. 50,000/-
(vii) Extra Nourishment	-	Rs. 30,000/-
Total Compensation	-	Rs.29,50,400/-

13. In the result, this Civil Miscellaneous Appeal is partly-allowed. The sum of Rs.30,00,400/- awarded by the Tribunal as compensation is hereby reduced to Rs.29,50,400/- (Rupees Twenty Nine Lakhs Fifty Thousand and Four Hundred only) by this Court. The appellant/Transport Corporation is directed to deposit the said award amount of Rs.29,50,400/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of claim petition till



the date of deposit, to the credit of M.C.O.P.No.28 of 2016, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondent/claimant is permitted to withdraw the said amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Admn II)

//True copy//

Sub Assistant Registrar

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To

- 1.The II Additional District and Sessions Judge,
Motor Accidents Claims Tribunal, Chidambaram.
- 2.The Section Officer, VR Section
High Court of Madras.

C.M.A.No.4129 of 2019

SV (CO)
GMY (28/10/2021)