



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4804 of 2019

and

C.M.P.No.27582 of 2019

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

Vs.

Senthil ...Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.09.2018 made in M.C.O.P.No.245 of 2017 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi.

For Appellant : Mr.K.J.Sivakumar

For Respondent : No appearance

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 11.09.2018 made in M.C.O.P.No.245 of 2017 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi.

3.The appellant is the respondent in M.C.O.P.No.245 of 2017 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi. The respondent filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.06.2017.



4. According to respondent, on 19.06.2017 at about 07.30 A.M., while he was riding his motorcycle bearing Registration No.TN 31 BJ 8375 on Kallakurichi - Kuthakudi road, near Nagalur bus stop, the driver of the bus bearing Registration No.TN 25 N 0443 belonging to appellant, who was driving the bus in the opposite direction in a rash and negligent manner, dashed against the motorcycle rode by the respondent and caused the accident. In the accident, the respondent was thrown away from his motorcycle and sustained multiple grievous injuries all over his body. Immediately after the accident, the respondent was taken to Government Hospital, Kallakurichi. Thereafter he was taken to Ganga Hospital, Coimbatore for further treatment. Therefore, the respondent filed the said claim petition claiming a sum of Rs.20,00,000/- 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, at the time of accident, while the driver of the bus was driving the bus from Tiruvannamalai to Trichy near Nagalur, the respondent rode the motorcycle from the opposite direction in a rash and negligent manner near a curve and dashed on the right side side bumper of the bus and caused the accident. Therefore, the accident has occurred only due to negligence on the part of the respondent. The respondent registered a case against the driver of the bus only with an intention to get compensation from the appellant-Transport Corporation. The appellant denied the age, avocation, nature of injuries, disability, medical bills and period of treatment taken by the respondent. The respondent has taken treatment in a Private Hospital only to get higher compensation from the appellant-Transport Corporation. 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 himself as P.W.1 and 11 documents were marked as Exs.P1 to P11. On behalf of the appellant, one Karthikeyan, 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, Government Villupuram Medical College Hospital, Villupuram 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.6,45,000/- as compensation to the respondent.



8. Against the said award dated 11.09.2018 made in M.C.O.P.No.245 of 2017, the appellant-Transport Corporation has come out with the present appeal.

WEB COPY

9. The learned counsel appearing for the appellant contended that the Tribunal fixed negligence on the part of the driver of the bus belonging to appellant only based on Ex.P1/F.I.R., which was registered against him. The Tribunal failed to consider the evidence of R.W.1, who is the driver of the bus. R.W.1 deposed that the respondent only rode his motorcycle in a rash and negligent manner and dashed against the right side bumper of the bus and caused the accident. The injuries sustained by the respondent are only simple in nature and the percentage of disability assessed by the Medical Board, Government Villupuram Medical College Hospital, Villupuram for the respondent at 21% is on the higher side. The amounts of Rs.1,00,000/- each awarded by the Tribunal towards permanent discomfort and loss of amenities are without merits. The amount awarded by the Tribunal towards medical expenses is highly excessive. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

10. Though notice has been served on the respondent and his name is printed in the cause list, there is no representation on behalf of him, either in person or through counsel.

11. Heard the learned counsel appearing for the appellant-Transport Corporation and perused the entire materials on record.

12. From the materials available on record, it is seen that it is the case of the respondent that accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation. To prove the said contention, the 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 respondent only rode his motorcycle in a rash and negligent manner near a curve and dashed on the right side bumper of the bus and caused the accident. To prove the said contention, the appellant examined the driver of the bus as R.W.1. R.W.1 is an interested witness and the appellant has not examined any eyewitness to prove their case that accident has occurred only due to negligence on the part of the respondent. Further, the appellant-Transport Corporation or the driver of the bus did not lodge any complaint



against the 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, R.W.1, Ex.P1/F.I.R. and failure on the part of the appellant for not filing any objection to F.I.R. and not lodging any complaint against the 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.

13.As far as quantum of compensation is concerned, it is the case of the respondent that in the accident he sustained both bone fracture in right leg and laceration and multiple injuries all over the body. The Medical Board, Government Villupuram Medical College Hospital, Villupuram examined the respondent and certified that he suffered 21% disability and issued Ex.C1/disability certificate to that effect. The Tribunal considering the percentage of disability issued by the Medical Board, Government Villupuram Medical College Hospital, Villupuram, awarded a sum of Rs.63,000/- for 21% of disability at the rate of Rs.3,000/- per percentage of disability. The accident occurred in the year 2017 and a sum of Rs.3,000/- per percentage of disability awarded by the Tribunal is meagre. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2017. The respondent is entitled to a sum of Rs.5,000/- per percentage of disability, whereas the Tribunal has awarded only a sum of Rs.3,000/- per percentage of disability. From the award passed by the Tribunal it is seen that the Tribunal has awarded excessive amounts of Rs.1,00,000/- each towards loss of amenities and permanent discomfort. Therefore, in view of the meagre amount awarded by the Tribunal towards disability, the excessive amounts awarded by the Tribunal towards loss of amenities and permanent discomfort are not interfered with. The total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.6,45,000/- 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.245 of 2017 on the file of the Motor



Accidents Claims Tribunal, III Additional District Court, Kallakurichi. On such deposit, the respondent is permitted to withdraw the award amount along with proportionate 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.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

krk
To

1. The Motor Accidents Claims Tribunal,
III Additional District Judge,
Kallakurichi.

+1 CC to Mr.K.J.Sivakumar, Advocate sr 5617.

C.M.A.No.4804 of 2019

KV(CO)
SP(07/09/2021)