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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.07.2021	Delivered on: 06.08.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2921 of 2014
and
M.P.No.1 of 2014

The Managing Director,
Andhrapradesh State Road Transport Corporation,
Hyderabad. ...Appellant / Respondent

Vs.

R.Selvam ...Respondent / Petitioner

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.01.2012 made in M.C.O.P.No.885 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Krishnagiri.

For Appellant : Ms.G.V.Shoba

For Respondent : Mr.Mukund R.Pandian

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 20.01.2012 made in M.C.O.P.No.885 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Krishnagiri.

2.The appellant is the respondent in M.C.O.P.No.885 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Krishnagiri. The respondent filed the above 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 26.01.2007.

3.According to respondent, on 26.01.2007 at about 16.50 hours, he was riding the TVS Suzuki motorcycle bearing Registration No.TCD 835 on the Kuppam to Krishnagiri Main Road



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along with one Govindaraj as pillion rider. While nearing the Basavanna Koil Bus Stop, they saw their friend Ramesh and hence, they were talking on the side of the road. At that time, near Basavannan Koil Bus Stop, the driver of the APSRTC Bus bearing Registration No.AP 11 Z 4465 belonging to appellant-Transport Corporation, drove the same in a rash, reckless and negligent manner at an uncontrollable speed without sounding horn, came from Kuppam side and dashed on the motorcycle in which the respondent was sitting and caused the accident. In the accident, the respondent, the pillion rider Govindaraj and his friend viz., Ramesh sustained multiple injuries all over the body. Immediately after the accident, the respondent was taken to Government Hospital, Krishnagiri, where he was given first aid treatment. Thereafter, he was taken to Sparsh Hospital, Bangalore, where he has taken treatment as inpatient from 26.01.2007 to 21.02.2007 and then he was shifted to ARK Nursing Home, Krishnagiri. Further, he was referred to the Government General Hospital, Chennai for further treatment and there he has taken treatment as inpatient from 26.02.2007 to 22.03.2007 and underwent surgery on 27.02.2007. After discharge from the said Hospital, he has taken private treatment till filing of the claim petition. Therefore, he filed the above said claim petition under Section 163(A) of the Motor Vehicles Act, claiming a sum of Rs.8,00,000/- 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. The appellant denied the manner of accident as alleged by the respondent. According to the appellant, the driver of the bus stopped the bus at Pasavanna Koil Bus Stop to get down the passengers. At that time, the rider of the motorcycle, who was riding the motorcycle with 4 pillion riders was coming behind a lorry which was coming in the opposite direction and suddenly the rider of the motorcycle tried to overtake the lorry and came to the right side of the road i.e., opposite to the standing bus, lost his control over the motorcycle as he was riding the motorcycle with 4 pillion riders and hit the APSRTC bus which was standing at the Pasavanna Koil Bus Stop and invited the accident. The rider of the motorcycle was not having valid driving license to drive the motorcycle and also he was driving the motorcycle on the wrong side of the road, i.e., on the right side of the road than going on the left side. The accident has occurred only due to the negligence on the part of the rider of the motorcycle and the Newspaper report also confirms that the rider of the motorcycle was riding the same with 4 pillion riders. The rider and the pillion riders have violated the rules of the road and the Motor Vehicles Act and 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.

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5. Before the Tribunal, the respondent examined himself as P.W.1 and three Doctors as P.W.2 to P.W.4 and 11 documents were marked as Exs.A1 to A11. On behalf of the appellant, one Ravi, Driver of the bus was examined as R.W.1 and Newspaper Report was marked as Ex.B1.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the bus belonging to appellant-Transport Corporation is involved in the accident and directed the appellant-Transport Corporation to pay a sum of Rs.3,55,600/- as compensation to the respondent.

7. To set aside the award dated 20.01.2012 made in M.C.O.P.No.885 of 2009, the appellant-Transport Corporation has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that the Tribunal failed to properly appreciate the evidence of R.W.1 and passed the award totally based on the evidence of P.W.1 and came to the wrong conclusion that the rash and negligent driving by the driver of the bus belonging to appellant is the cause for the accident. The Tribunal failed to note that the accident has occurred only due to rash and negligent driving by the respondent, who came in the opposite direction in a drunken mood and dashed on the right side of the bus and the F.I.R. registered by the Police also reveal the same. The Tribunal failed to consider Ex.B1, Tamil Daily Newspaper which published the said occurrence and in which it is clearly mentioned that 'five persons came in a motorcycle and dashed on the standing bus and injured'. No eyewitness was examined on the part of the respondent to prove his case. The claim petition was filed under Section 163-A of the Motor Vehicles Act and the respondent cannot claim any compensation for his own fault. The entire medical records submitted by the respondent are bogus, created and manipulated for filing this claim petition. The Tribunal failed to see the difference in signature in Ex.A9/disability certificate of the Doctor and difference of date in Ex.A4. The Tribunal has not applied the mind while passing the award and has mechanically refused to consider the evidence and records filed on behalf of the appellant. The respondent has not suffered any permanent disability or grievous injuries and the monthly income of the respondent fixed by the Tribunal at Rs.1,000/- is on the higher side. P.W.2/Doctor has not treated the respondent. The total compensation awarded by the Tribunal at Rs.3,55,600/- is 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.

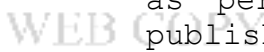
11.It is the case of the respondent that on 26.01.2007 at about 16.50 hours, he was riding the TVS Suzuki motorcycle bearing Registration No.TCD 835 on the Kuppam to Krishnagiri Main Road along with one Govindaraj as pillion rider and while nearing the Basavanna Koil Bus Stop, they saw their friend Ramesh and hence, they were talking on the side of the road. At that time, near Basavannan Koil Bus Stop, the driver of the APSRTC Bus bearing Registration No.AP 11 Z 4465 belonging to appellant-Transport Corporation, drove the same in a rash, reckless and negligent manner at an uncontrollable speed without sounding horn, came from Kuppam side and dashed on the motorcycle in which the respondent was sitting and caused the accident. To prove the said contention, the respondent examined himself as P.W.1 and marked documents. On the other hand, it is the case of the appellant that the driver of the bus stopped the bus at Pasavanna Koil Bus Stop to get down the passengers. At that time, the rider of the motorcycle, who was riding the motorcycle with 4 pillion riders was coming behind a lorry which was coming in the opposite direction and suddenly the rider of the motorcycle tried to overtake the lorry and came to the right side of the road i.e., opposite to the standing bus, lost his control over the motorcycle as he was riding the motorcycle with 4 pillion riders and hit the APSRTC bus which was standing at the Pasavanna Koil Bus Stop and invited the accident. To prove the said contention, the driver of the bus examined himself as R.W.1., marked F.I.R. as Ex.A1, which was registered against the respondent and marked the Newspaper Report as Ex.B1.

12.The present case is filed by the Transport Corporation to set aside the award passed by the Tribunal. From the materials available on record, it is seen that the accident has occurred on 26.01.2007 at 16.50 hours and the respondent as well as the appellant admit the same. As per Ex.A1/F.I.R., it is seen that the complaint was given by the driver of the bus against the respondent on 27.01.2007 at 16.00 hours stating that at the time of accident five persons traveled in the motorcycle and the rider of the motorcycle drove the same in a rash and negligent manner and dashed against the bus belonging to appellant-Transport Corporation, which was stopped at the Pasavanna Koil



Bus Stop to alight the passengers. The driver of the bus has not given any reason for the delay in lodging the F.I.R. against the respondent. If the driver of the bus is not at fault, he would have given the complaint immediately after the accident and also there is no explanation for the delay in lodging the F.I.R, which creates suspicion.

13.It is the further case of the appellant that at the time of accident five persons traveled in the motorcycle and the rider of the motorcycle drove the same in a rash and negligent manner and dashed against the bus belonging to appellant-Transport Corporation, caused the accident and sustained injuries. The respondent-claimant has filed the claim petition under Section 163(A) of the Motor Vehicles Act and hence, negligence need not be pleaded and proved. Further, the respondent also filed Ex.A7/judgment copy in M.C.O.P.Nos.414 of 2008 & 433 of 2008 under Section 163(A) of the Motor Vehicles Act, filed by one Govindaraj and Ramesh, who are said to be the pillion rider and friend of the respondent respectively. The Tribunal considering the said judgment, held that the claims made in the said claim petitions were similar to the claim made in M.C.O.P.No.885 of 2009 filed by the respondent. Further, in the said judgments, it was decided that the claimants Govindaraj and Ramesh were injured and hospitalized and they intimated about the road traffic accident and inspite of intimation, the Police had not recorded the statement but had lodged a complaint immediately against the respondent/claimant in M.C.O.P.No.885 of 2009 based on the complaint given by the driver of the bus after a delay of one day from the date of accident. It is further decided that in the counter statements, it has been stated that while the bus was proceeding slowly, the respondent drove the motorcycle in a rash and negligent manner and hit the bus, whereas, in his evidence, the driver of the bus has stated that while starting the bus, the respondent hit the bus. This created suspicion over the accident. It is also further decided that inspite of hospital intimation on the same day, the Police has not taken immediate action and hence, awarded compensation by applying multiplier method, without proving the negligence, as the claim petitions were filed under Section 163(A) of the Motor Vehicles Act. The Tribunal considered the fact that in Ex.A7, the nature of accident has not been mentioned as per the evidence of R.W.1 that while overtaking the lorry in front of the motorcycle in a rash and negligent manner and hit on the standing bus and held that Ex.A1/F.I.R. lodged on the next day is without adducing sufficient reason by R.W.1. If five persons traveled in the motorcycle at the time of accident as per the evidence of R.W.1, the other two persons who also got injured in the said accident would have filed separate claim petitions and got compensation. But, the other two persons have not filed any claim petition and there is no eyewitness to prove that at the



14. Further, it is seen from the award of the Tribunal that as per Ex.B1/copy of Tamil Daily News Paper, wherein it is published about the accident establishing that the respondent, his friends Ramesh, Sagayanathan, Govindaraj and Iyyadurai were travelling in one bike from Krishnagiri in Kuppam National High Road near Pasappa Bus Stop, hit against the bus belonging to appellant-Transport Corporation, but Ex.B1 does not reveal in which news paper the said news was published. The appellant has also raised a ground in the grounds of appeal that the respondent was in a drunken mood at the time of accident. But, from the materials available on record, it is seen that the appellant-Transport Corporation has not raised any ground in the counter statement before the Tribunal that the respondent-rider of the motorcycle was in a drunken mood at the time of accident. Without any pleadings in the claim petition or in the counter statement, the appellant-Transport Corporation now cannot raise a new ground before this Court.

15. It is the further case of the appellant that Ex.A1/F.I.R. was registered against the respondent and hence, the appellant is not liable to pay any compensation to the respondent. FIR is not a cyclopedia. It is well settled that negligence cannot be fixed only relying on the FIR or judgments of the Criminal Court. The Tribunal has to independently consider the evidence let in before it. In the present case, the Tribunal considering the entire materials on record, especially Ex.A7/judgment copy in M.C.O.P.Nos.414 & 433 of 2008 filed by Govindaraj and Ramesh, who are the pillion rider and friend of the respondent, held that the respondent sustained injuries in the accident involving the bus belonging to appellant-Transport Corporation. There is no error in the said finding of the Tribunal.

16.As far as quantum of compensation is concerned, it is the claim of the respondent in the claim petition that in the accident, he sustained lacerated wound over the unilateral region, lacerated wound over the left cheek, injury over the mandible and depressed fracture over the right 2nd and 3rd ribs. Immediately after the accident, the respondent was taken to Government Hospital, Krishnagiri, where he was given first aid treatment. Thereafter, he was taken to Sparsh Hospital, Bangalore, where he has taken treatment as inpatient from 26.01.2007 to 21.02.2007 and then he was shifted to ARK Nursing Home, Krishnagiri. Further, he was referred to the Government General Hospital, Chennai for further treatment and there he has taken treatment as inpatient from 26.02.2007 to 22.03.2007 and underwent surgery on 27.02.2007. The Tribunal considering the nature of injuries, Exs.A2 to A4, A6, A8 to A11, period of



treatment taken and the nature of work done by the respondent, has awarded a sum of Rs.3,55,600/- as compensation to the respondent and the same is not excessive warranting interference by this Court.

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17. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.3,55,600/- 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.885 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Krishnagiri. 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/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.39385

+1cc to Ms.G.V.Shoba, Advocate, S.R.No.39171

C.M.A.No.2921 of 2014

RVM(23/11/2021)