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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.07.2021
Pronounced on : 28.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. No.3141 of 2014
and MP.No.1 of 2014

Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division I,
37, Mettupalayam Road,
Coimbatore.

.. Appellant

Versus

1. Bala Murali
2. Subramaniam
[R2-given up]

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order dated 27.09.2010 passed in MCOP.No.961 of 2009 by the learned Principal Sub Judge, Motor Accident Claims Tribunal, Tirupur.

For appellant : Mr.S.S.Swaminathan

For respondents
for R1 : Mr.Ma.P.Thangavel

J U D G M E N T

The appeal is heard through video conferencing.

2. Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal/ Principal Sub Judge, Tirupur in MCOP.No.961 of 2009, dated 27.09.2010, the present appeal has been filed by the Transport Corporation.

3. It is the case of the first respondent/claimant that on 10.02.2003 at about 09.15 p.m., the claimant as a passenger, travelled in a Bus bearing Registration No.TN-38-N-0761, which came in a rash and negligent manner, and dashed against a Van



bearing Registration No.TN-37-H-8666. Due to the impact, the claimant sustained grievous injuries. Immediately, the claimant was taken to the Coimbatore Richmond Hospital and he was given treatment.

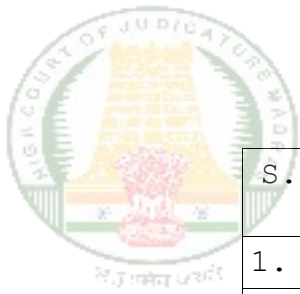
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4. It is the further case of the first respondent/claimant that at the time of the accident, the claimant was aged about 28 years old and working as a Machine Operator and earning Rs.3,300/- per month. He made a claim for a sum of Rs.8,00,000/- as compensation as against the appellant/Transport Corporation. The said Van was not traced by the Police. Hence, the driver, owner and Insurance Company of the said Van, are not added as parties.

5. The said claim petition was resisted by the Transport Corporation by filing a detailed counter statement. It is the specific contention of the learned counsel for the Transport Corporation that, on 10.02.2003, the Bus bearing Registration No.TN-38-N-0261 was on its trip from Ukkadam to Appanaickenpatty Pudur and when they were nearing NEPC Mil, at CBE-Trichy Road, the Van bearing registration No.TN-37-H-8666 came from the opposite direction in a rash and negligent manner and dashed against the right side portion of the Bus. Due to the impact, the claimant who travelled in the Bus sitting at the rear side, sustained injuries. Thereafter, the Sular Police, filed FIR against the driver of the Van bearing registration No.TN-37-H-8666 based on the complaint given by the driver of the appellant-Transport Corporation Bus. Since the driver of the Van is the one, who is responsible for the accident, the claim made against the appellant-Transport Corporation may be dismissed.

6. In order to prove the claim on the side of the claimant, the claimant examined himself as PW1, besides examining two other witnesses as PWs.2 & 3 and marked Exs.P1 to P6. On the side of the Transport Corporation, one Arumugam, who is the conductor of the said Bus, was examined as RW1, but no exhibit was marked.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the appellant-Transport Corporation Bus. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.4,30,540/- and directed the appellant-Transport Corporation to pay the above compensation amount. The amounts awarded by the Tribunal under various heads are as follows:



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S. No.	Heads under which amounts are awarded	Amount in Rs.
1.	Loss of Income	2,52,720
2.	Pain and Sufferings	15,000
3.	Extra Nourishment	2,000
4.	Transportation Expenses	1,000
5.	Loss of Amenities	5,000
6.	Medical Expenses	1,54,820
	Total	4,29,820

The total compensation awarded by the Tribunal comes to Rs.4,30,540/-. However, it was wrongly mentioned by the Tribunal as Rs.4,29,820/-.

8. It is the contention of the learned counsel for the appellant/Transport Corporation that only the driver of the Van bearing registration No.TN-37-H-8666 came in a rash and negligent manner and dashed against the Bus and the FIR was also registered against the driver of the said Van alone. In spite of that, the Tribunal has wrongly held that the accident was due to the negligent driving of the driver of the appellant-Transport Corporation and directed the appellant-Transport Corporation to pay the compensation amount, which is warrants interference by this Court.

9. With regard to the quantum of compensation, it is the submission of the learned counsel for the appellant-Transport Corporation that the Tribunal erred in adopting multiplier method to arrive at the loss of income in the absence of any materials to prove the loss of avocation due to the accident.

10. The learned counsel appearing for the first respondent/claimant made his submissions supporting the award passed by the Tribunal.

11. Heard both sides and perused the materials available on record.

12. The Tribunal, based on the evidence of PW1, fixed the liability on the part of the driver of the appellant-Transport Corporation Bus. It is to be noted that to prove the contention of the appellant-Transport Corporation before the Tribunal, the Transport Corporation had examined only the conductor of the Bus. However, they failed to examine the Driver of the said Bus,



who is the correct person to explain about the manner in which the accident had occurred and to find out the negligent part. It is also pertinent to note that, though the complaint was given by the driver of the Bus, he has not chosen to appear before the Tribunal to depose about the manner of accident. Hence, adverse inference has to be drawn against him. Hence, this Court comes to the conclusion that the appellant-Transport Corporation, who is the owner of the said Bus, has to pay the compensation amount to the claimant.

13. As far as the quantum of compensation is concerned, this Court finds that, the Tribunal, after analysing the entire evidence fixed the percentage of disability of the claimant at 39%, as the claimant could not do his job as he was doing before the accident. Hence, this Court finds that the Tribunal rightly applied multiplier method and awarded appropriate compensation under the head "Disability" at Rs.2,52,720/- [3,000 x 12 x 39/100]. Thus, the said sum of Rs.2,52,720/- arrived by the Tribunal is absolutely right. Further, the amounts awarded by the Tribunal under all the other heads are also fair and reasonable. Consequently, the Tribunal awarded a sum of Rs.4,30,540/- as compensation to the claimant. This Court does not find any ground to interfere with the same.

14. In the result, the Civil Miscellaneous Appeal stands dismissed and the award under challenge is confirmed. The appellant/Transport Corporation is directed to deposit the award amount of Rs.4,30,540/-, less the amount already deposited, along with 7.5% interest, from the date of claim petition till the date of payment, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount in accordance with law before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

pvs



To

1. The Principal Sub Judge, Tiruppur
The Motor Accident Claims Tribunal

2. The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.S.S.Swaminathan, Advocate sr 36460.

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 36120.

C.M.A. No.3141 of 2014

JPL (CO)
SP (08/12/2021)