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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.4399 of 2019

and

C.M.P.No.25003 of 2019

The Managing Director,
Karnataka State Road Transport Corporation Ltd.,
No.115, K.H.Road, Shanthi Nagar,
Bengaluru 560 027.

.. Appellant/Respondent

Vs.

Munusamy

.. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.03.2019, made in M.C.O.P. No.10 of 2018, on the file of the Sub Court, (Motor Accident Claims Tribunal), Uthangarai.

For Appellant : Mr.T.Thiyagarajan

For Respondent : Mr.J.Pradeep

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the award dated 22.03.2019, made in M.C.O.P. No.10 of 2018, on the file of the Sub Court, (Motor Accident Claims Tribunal), Uthangarai.

2.The appellant-Transport Corporation is the respondent in M.C.O.P. No.10 of 2018, on the file of the Sub Court, (Motor Accident Claims Tribunal), Uthangarai. The respondent/claimant filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.08.2017.

3.According to the respondent, on the date of accident, he traveled in the Bus bearing Registration No.KA-57-F-1653 belonging to the appellant-Transport Corporation from Thirukoilur towards Bangalore. While nearing Gengapirampatti Milk Diary at Tirupattur to Uthangarai main road, the driver of the said Bus drove the same in a rash and negligent manner, lost



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control and suddenly dashed on the tamarind tree in the left side of the road and caused the accident. The accident occurred only due to rash and negligent driving by driver of the Bus belonging to the appellant-Transport Corporation. Hence, the respondent filed the claim petition claiming compensation against the appellant as owner of the said vehicle.

4.The appellant-Transport Corporation, filed counter statement and denied all the averments made by the respondent in the claim petition. According to the appellant, on the date of accident, when the KSRTC Bus belonging to them was returning from Thirukovilur to Bangalore, since the Singarapettai to Uthangarai bridge was under repair, the driver has taken diversion to the right side before 4 kms to Uthangarai. In that diversion, a TNSTC Bus suddenly came in opposite direction of this Bus. In order to avoid hitting the TNSTC Bus, the driver of the KSRTC Bus turned to the extreme left side of the road. Due to rain the mud was slippery and hence, the driver of the Bus lost his grip and the left side of the Bus dashed against the tamarind tree on the left side of the road and the accident occurred. There is no negligence on the part of the driver of the Bus belonging to the appellant-Transportation. Hence, the appellant is not liable to pay compensation to the respondent. In any event, the total compensation awarded by the Tribunal is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined himself as P.W.1 and marked 15 documents as Exs.P1 to P15. The appellant did not examine any witness, but marked one document as Ex.R1. 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 the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.3,11,000/- as compensation to the respondent.

7.To set aside the award dated 22.03.2019, made in M.C.O.P. No.10 of 2018, the appellant - Transport Corporation has come out with the present appeal.

8.The learned counsel appearing for the appellant-Transport Corporation contended that the finding of the Tribunal in respect of the negligence and involvement of the vehicle belonging to the appellant is contrary to the evidence on record and perverse. The Tribunal failed to note that the accident has taken place only on account of the negligence of the Mini Bus which came in the opposite direction and over took the TNSTC

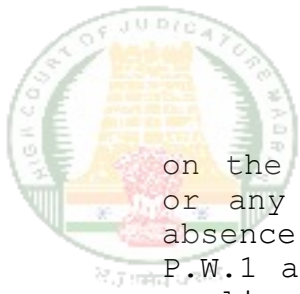


Vehicle. In order to avert hitting, the driver of the KSRTC Bus turned to the left hand side and due to rain, the KSRTC Bus got slipped and dashed against tree. The learned counsel appearing for the appellant submitted that the Tribunal erred in fixing liability on the appellant, relying on the evidence of P.W.1 and Ex.P1 - FIR. The assessment of disability by the Medical Board is not based on any medical records. The respondent failed to prove the avocation and income. In the absence of any evidence, the Tribunal excessively fixed a sum of Rs.8,000/- per month as notional income. The respondent has not undergone any surgery or fracture. In such circumstances, the amount of Rs.30,000/- awarded by the Tribunal towards loss of income is erroneous. The respondent suffered only simple injuries and the amounts granted by the Tribunal towards pain and suffering, loss of amenities and enjoyment of life, nutrition, transport and attendant charges are excessive and prayed for setting aside the award of the Tribunal.

9.Per contra, the learned counsel appearing for the respondent contended that the accident occurred only due to rash and negligent driving by driver of the KSRTC Bus belonging to the appellant-Transport Corporation. The appellant did not examine the driver or any eye witness to prove their case. The Tribunal considering the evidence of respondent as P.W.1 and FIR marked as Ex.P1, rightly held that accident occurred only due to rash and negligent driving by driver of the KSRTC Bus. The Tribunal granted only a sum of Rs.20,000/- for transportation, extra nourishment and attendant charges. The accident is of the year 2017. The Tribunal erroneously fixed meagre sum of Rs.8,000/- per month as notional income. The respondent has taken treatment as in-patient at Jipmer Hospital, Pondicherry, from 12.08.2017 to 23.08.2017. The amounts awarded by the Tribunal under different heads are meagre and prayed for dismissal of the appeal.

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

11.It is the case of the respondent that while he was travelling in the KSRTC Bus belonging to the appellant-Transport Corporation, the driver of the Bus drove the same in a rash and negligent manner and dashed on the tamarind tree on the side of the road and caused the accident. In the accident, the respondent sustained injuries and filed claim petition claiming compensation for the injuries. To prove his case, he examined himself as P.W.1 and filed FIR which was registered against the driver of the Bus. On the other hand, it is the case of the appellant that driver of the Bus, to avoid hitting a Mini Bus coming in the opposite direction, turned to the left side and due to rain, the KSRTC Bus slipped and lost control and dashed



on the tamarind tree. The appellant did not examine the driver or any eye witness to prove their case. The Tribunal, in the absence of any contra evidence to the evidence of respondent as P.W.1 and FIR, held that accident occurred only due to rash and negligent driving by driver of the KSRTC Bus. There is no error in the finding of the Tribunal warranting interference by this Court.

12.As far as the quantum of compensation is concerned, it is the case of the respondent that in the accident, he sustained grievous injuries and has taken treatment at Jipmer Hospital, Pondicherry from 12.08.2017 to 23.08.2017, for a period of 12 days. At the time of accident, he was working as an Iron Merchant and also as Agriculturist and was earning a sum of Rs.10,000/- per month. The respondent failed to prove the same. In the absence of materials, the Tribunal fixed a sum of Rs.8,000/- per month as notional income of the respondent. The respondent was referred to the Medical Board. The Medical Board at Government Head Quarters Hospital, Krishnagiri, examined the respondent and certified that the respondent suffered 35% disability. The Tribunal has granted only a sum of Rs.90,000/- towards disability at the rate of Rs.3,000/- per percentage for 30% disability and a sum of Rs.20,000/- towards transport, nutrition and attendant charges together. In view of the same, the sum of Rs.70,000/- granted by the Tribunal towards pain and sufferings and Rs.70,000/- granted towards loss of amenities and enjoyment of life are not interfered with. The Tribunal has granted compensation along with interest at the rate of 9% per annum, which is excessive. As per the RBI guidelines, the respondent is entitled to interest at the rate of 7.5% per annum.

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,11,000/- is confirmed, but the appellant-Transport Corporation is directed to deposit the award amount together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, 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.10 of 2018. 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, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Uthangarai.

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

+1cc to Mr.T.Thiyagarajan, Advocate, S.R.No.8449

+1cc to Mr.J.Pradeep, Advocate, S.R.No.8573

C.M.A. No.4399 of 2019

KK(CO)
GN(29/09/2021)