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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2974 of 2017

The Managing Director,
Karnataka State Road Transport Corporation,
Central Division, K.H.Road,
Bengaluru - 560 027.

...Appellant/ Respondent

Vs

V.Chinnaswamy

... Respondent / Claimant

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, prayed to set aside the judgment and decree dated 29.04.2016 made in M.C.O.P.No.3362 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) at Krishnagiri.

For Appellant : Mr.T.Thiyagarajan

For Respondent : Mr.K.Prasanna

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 29.04.2016 made in M.C.O.P.No.3362 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) at Krishnagiri.

2.The appellant is the respondent in M.C.O.P.No.3362 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. The respondent filed the above said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.08.2011.

3.According to the respondent, on 03.08.2011, while he was travelling as a pillion rider in Hero Honda Splendor Bike



bearing Registration No.TN.24/V.4222 and one S.Suresh was riding the said Motor Cycle. They were proceeding in Thiruvannamalai to Krishnagiri Road. The rider of the said Motor Cycle was proceeding on the left side of the road, slowly and cautiously observing the traffic rules. When the said two wheeler was proceeding near the Fibre factory at Vettiyampatti in Thiruvannamalai to Krishnagiri Main Road, the driver of KSRTC bus bearing Registration No.KA.01/F.9156, belonging to the appellant drove the bus in a rash and negligent manner without minding the rules of the road and dashed on the said Hero Honda Motor Cycle and caused the accident. Due to the said accident, the pillion rider sustained head injury and multiple grievous injuries on his right leg and other injuries all over his body. Therefore, the respondent filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him against the appellant-Transport Corporation.

4.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.6,36,800/- as compensation to the respondent.

5.Challenging the liabilities as well as quantum of compensation awarded by the Tribunal, the appellant-Transport Corporation has come out with the present appeal.

Liabilities:

6.The learned counsel for the appellant submitted that the accident has occurred due to the rash and negligence on the part of the rider of the two wheeler. The rider of the two wheeler rode the bike by carrying the firewoods. The pillion rider travelled on the bike by sitting on the firewoods. Therefore, they were not able to control the bike and hit on the appellant/Transport Corporation bus and thereby the accident was occurred. Therefore, he submitted that the accident was not occurred due to the negligence of the driver of the bus. However, this aspect was not considered by the Tribunal and fixed the entire liability on the driver of the bus.

7.He further submitted that the driver of the bus was examined and he deposed that the accident took place due to the rash and negligent riding by the rider of the two wheeler. Further, they were carrying the firewoods in the bike. The Court



below without considering the same, by examining the FIR, which was marked as Ex.A1 and upon perusal of the deposition of P.W.1/Claimant, has come to the conclusion that the accident was occurred due to the rash and negligent driving on the part of the driver of the appellant/Transport Corporation bus.

8. Heard the learned counsel for the appellant and perused the materials available on record.

9. In the F.I.R, it has been stated that the accident was occurred due to the negligence on the part of the driver of the Transport Corporation bus. Further the management of the appellant has cut off one increment of the driver of the bus. Taking into consideration all these aspect, the Tribunal has fixed the entire liability on the Transport Corporation.

10. A perusal of the deposition of P.W.1, shows that the accident took place due to the negligence on the part of the driver of the bus. However, on behalf of the appellant/respondent, except the driver of the bus, none of the witness was examined in order to prove the negligence of the rider of the two wheeler. Under such circumstances, the Court below fixed the entire liability on the part of the appellant/Transport Corporation. Therefore, I do not find any infirmity on the finding of the Court below with regard to the liability fixation against the Transport Corporation.

Quantum:

11. The learned counsel for the appellant submitted that in the present case the injured is working as mason and the Court below has fixed 40% disability. He further submitted that the claimant came to the Court and deposed the evidence in a good state of mind and the disability has not affected his life in any way. The Court below fixed the the notional income of the injured as a sum of Rs.6,500/- and awarded compensation by applying multiplier method, which is on the higher side. The Court below ought not to have awarded compensation by virtue of multiplier method. The Court ought to have awarded a sum of Rs.2,000/- per percentage as loss of income and ought to have awarded compensation based on the percentage method. Therefore, to that extent the award of the Court below needs to be set aside.

12. Further, the learned counsel for the appellant brought



to the knowledge of this Court that the Tribunal has awarded 9% interest. As far as the law settled by this Court, the same needs to be reduced as 7.5%.

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13.The learned counsel for the respondent fairly submitted that the interest may be reduced to 7.5%.

14.Heard the learned counsel for the appellant as well as the respondent and perused the materials available on record.

15.Upon perusal, it appears that the claimant sustained severe injury on his head and some of the bones were removed, which was confirmed by the Doctor/P.W.2. Further, Ex.P6/X-Ray and Ex.P5/disability certificate would prove that the claimant has sustained severe injury on the head. He is working as a mason and he has to work on the high rise building. The disability suffered by him will definitely affect his nature of work. Taking into consideration of all these aspect, the Court below has rightly fixed the notional income as a sum of Rs.6,500/- and awarded compensation by applying multiplier method. Therefore, this Court does not find any error on the part of the Court below in applying the multiplier method and does not find any merit in the submissions made by the learned counsel for the appellant.

16.As far as the amount awarded under other heads are concerned, the learned counsel for the appellant has not made any objection. Therefore, this Court concur with the finding of the Court below with the amounts awarded under Serial Nos.1 to 8.

17.As far as interest rate is concerned, the rate of interest awarded by the Tribunal as 9% is reduced to 7.5%.

18.In the result, this Civil Miscellaneous Appeal is partly allowed and hereby the interest rate awarded by the Tribunal as 9% is reduced to 7.5%. The appellant-Transport Corporation is directed to deposit a sum of Rs.6,36,800/- along with 7.5% interest and costs, less the amount already deposited, if any, 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.3362 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The Tribunal is directed to transfer the entire amount to the claimant by way of RTGS, within a period of



three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is later. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
The Special Sub Judge, Krishnagiri.

+1cc to Mr.T.Thiyagarajan, Advocate, S.R.No.22416

+1cc to Mr.Mukund.R Pandiyan, Advocate, S.R.No.22388

C.M.A.No.2974 of 2017

BS(CO)
SB(12/10/2021)