



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 17.12.2020

DATE ON WHICH PRONOUNCED : 11.01.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A(MD) No.1034 of 2010

and

MP(MD)No.2 of 2010

The Managing Director,
Tamil Nadu State,
Transport Corporation,
Coimbatore.

... Appellant/Respondent

vs.

Sellamuthu

... Respondent/ Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree passed in M.C.O.P.No.316 of 2006 dated 19.08.2009 on the file of the Motor Accident Claims Tribunal/Sub-Court, Palani.

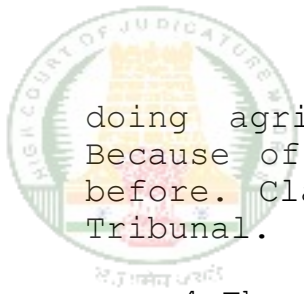
For Appellant	: Mr.M.Prakash
For Respondent	: Mr.D.Venkatesh

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree passed in M.C.O.P.No.316 of 2006 dated 19.08.2009, on the file of the Motor Accident Claims Tribunal/Sub-Court, Palani.

2.The case of the claimant before the Tribunal is that on 14.01.2006, at about 10.00 a.m., the petitioner was riding his two wheeler bearing Registration No.TN-57-X-5953 from West to East direction. At that time, in the opposite direction, the bus, bearing Registration No.TN-33-N-1695, was driven by its driver in a rash and negligent manner and dashed against the petitioner. As a result of which, he sustained injuries and was taken to Kovai Medical Centre, Coimbatore, till 01.03.2006, where, he underwent surgery.

3.In respect of the above offence, a case in Crime No.12 of 2006 was registered against the driver of the offending vehicle. At the time of the accident, he was earning a sum of Rs.10,000/- by



doing agriculture and business called 'Balaji Steel Agencies'. Because of the accidental injuries, he is not able to do work as before. Claiming compensation of Rs.12,00,000/-, he approached the Tribunal.

4.The case of the appellant before the Tribunal is that the accident took place only due to the rash and negligent driving on the part of the petitioner. Even though, the respondent's vehicle driver stopped the bus, on seeing the rash and negligent driving on the part of the petitioner, due to his uncontrollable speed, two wheeler hit against the bus. Other particulars were denied conventionally.

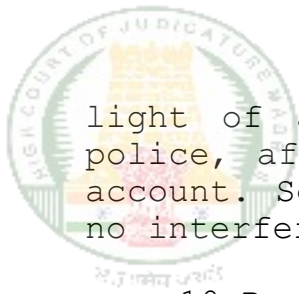
5.Before the Tribunal, on the side of the petitioner, two witnesses were examined and eighteen documents marked. On the side of the respondent, one witness was examined and no document marked.

6.At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the appellant's vehicle driver and taking into account the medical evidence, assessed the disability at 75% and awarded the total compensation amount of Rs.4.75 lakhs with interest and costs.

7.Challenging the same, the appeal has been preferred on the ground that the disability was assessed incorrectly and the Medical Expenses was also not proved. It has also contended that there was no negligence on the part of the appellant's driver.

8.Regarding the occurrence, P.W.1, who is the claimant has stated that when he was riding his two wheeler on the left side in the road, the offending vehicle came in the opposite direction and dashed him. He was cross examined to the effect that without having proper driving license, he drove the two wheeler negligently. He tried to over-take the vehicle, which was proceeding ahead of him and in that process, dashed against the vehicle coming in the opposite direction.

9.R.W.1, was the driver in the offending vehicle at the time of the accident. He would say that the petitioner tried to over-take a lorry, which was proceeding ahead of him and in that process dashed against right side bumper of the vehicle. So, the petitioner has also contributed to the accident. It was admitted that a criminal case was registered against him and after investigation, he was charge sheeted before the Magistrate Court, Otanchadram. If really the petitioner was negligent, only R.W.1 would have lodged a complaint before the police. He has not taken any steps. Ex.P.2 and Ex.P.3 are the Motor Vehicle Inspector's Report. It shows that both the vehicles suffered damage in the front side and also in the right side. There is no evidence to show that the petitioner tried to over-take a lorry, which was proceeding ahead of him. So, in the

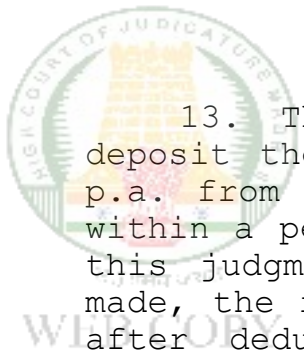


light of absence of any evidence, he was charge sheeted by the police, after investigation. So, his evidence cannot be taken into account. So, the findings of the Tribunal on these aspects requires no interference.

10.Regarding the compensation, the Tribunal assessed the same at as 75% as mentioned earlier. Ex.P.4 is the Wound Certificate. We find that totally eight injuries were noted. The first injury is the Head Injury having intra cerebral bleed and there was a fracture on the right femur (Open Type I). Fracture on the right middle finger and index finger. Fracture on the right cateral tibial condyle (Open Type III) and as per the evidence of P.W.2, he was admitted on 14.01.2006 in Kovai Medical Centre, Coimbatore and discharged on 01.03.2006. Ex.P.4 and Ex.P.5 were identified by him as if, those documents were issued by them. So, from the evidence of P.W.2, it is seen that even though the petitioner suffered multiple injuries and fractures, except the movement of restriction on the right hand and in the right knee portion, other injuries were cured and caused no infirmities. P.W.3, examined the petitioner for assessing the disability and according to his assessment, as per X-Rays, he found that the Middle Right Finger suffered malunion and he was fitted with rods and screws for fracture on the right femur Tibia. But, they united properly. So, because of the movement in the restriction, he has assessed the disability at 44%, he would say that further surgery required for removing the rods and screws. P.W.4 is the Dentist. He would say that because of the fracture in the mandible area, slight changes in the face and he experience difficulty in chewing and assessed the total disability for this purpose at 35% and issued discharge summary Ex.P.19. The Tribunal added both this disabilities and work out the total disability at 79% and reduced the same to 75% for assessing the compensation. Rs.2,000/- was awarded on each percentage of disability.

11.The Tribunal did not fix the compensation on the basis of functional disabilities. There is no evidence on record to show the disability for the whole body. But, considering the nature of injury suffered by him and duration of the period of treatment, the expenses incurred by him, I find that compensation fixed at **Rs.1,50,000/-** is reasonable for the disabilities. **Rs.10,000/-** for Pain and Suffering, **Rs.5,000/-** for Extra Nourishment, **Rs.10,000/-** for Transport Charges and **Rs.3,00,000/-** for Medical Expenditure, on the basis of the Medical Bills is also reasonable. The total expenditure was Rs.3,19,190/-, as per Ex.P.8 to Ex.P.11 and it was reduced to Rs.3,00,000/-. So, the total compensation fixed by the Tribunal is **Rs.4,75,000/-** found to be reasonable and this Court find no reason to interfere with the same.

12. In the result, the appeal fails and accordingly, dismissed. The award passed by the Tribunal is confirmed. No costs. Consequently connected miscellaneous petition is closed.



13. The appellant / Transport Corporation, is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and cost within a period of two month from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the respondent / claimant is permitted to withdraw the amount after deducting amount, if any, already received by him. The claimant is not entitled for interest for the default period, if there is any default.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Motor Accident Claims Tribunal/
Sub-Court, Palani.

2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.PRAKASH, Advocate (SR-1002[F] dated 18/01/2021)

Judgment made in

C.M.A(MD) No.1034 of 2010

and

MP (MD) No.2 of 2010

11.01.2021

VB (17.02.2021) 4P 5C