



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 13.09.2021

Delivered On : 05.10.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1115 of 2014

and

M.P.(MD)No.2 of 2014

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Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam rep. By its Managing Director,
Railway Station New Road,
Kumbakonam.

... Appellant/1st Respondent

Vs.

1.S.Rajalakshmi
2.United India Insurance Company Limited,
Kumbakonam represented by its Divisional Manager,
Having office at 1st Floor,
42, Mutt Street,
Kumbakonam.

... Respondents/Petitioner and 2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 06.01.2014 passed in M.C.O.P.No.314 of 2012, on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Kumbakonam.

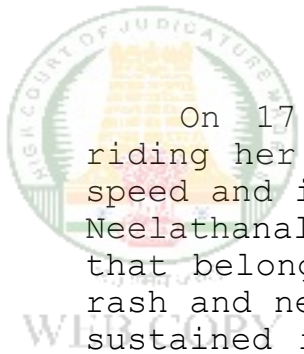
For Appellant	: Mr.P.Prabhakaran
For 1 st Respondent	: Mr.H.Lakshmi Shankar
For 2 nd Respondent	: Mr.A.Shajahan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.314 of 2012 dated 06.01.2014, on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Kumbakonam.

2.The appellant herein is the first respondent, the first respondent herein is the claimant and the second respondent herein is the second respondent in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.314 of 2012, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 17.05.2012. The Tribunal has awarded a sum of Rs.4,64,385/- (Rupees Four Lakhs Sixty Four Thousand Three Hundred and Eighty Five only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.314 of 2012 is as follows:



On 17.05.2012 at about 06.45 p.m., when the petitioner was riding her scooter bearing registration No.TN-68-B-8699 in a normal speed and in a cautious manner along the left side of the Kumbakonam Neelathanallur main road, a bus bearing registration no.TN-49-N-1468 that belongs to the first respondent was driven by its driver in a rash and negligent manner hit against the petitioner. The petitioner sustained injuries on her left thigh, left side hip, left hand and face. She was taken to Government hospital, Kumbakonam and then she was admitted in Rohini hospital, Thanjavur and was discharged on 30.05.2012. She took treatment as 'in patient' from 30.05.2012 till 19.06.2012. Again she was admitted in the hospital and took treatment as 'inpatient' from 01.07.2012 till 11.07.2012. After the accident, she is unable to work, sit, to climb the stairs and she is unable to ride the scooter. The petitioner claimed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation.

4.A brief substance of the counter filed by the first respondent therein is as follows:

On 17.05.2012 at 06.00 p.m., the respondent driver took the bus for trip from Kumbakonam bus stand. When the first respondent bus driver stopped the bus in the bus stop and when the passengers were getting down from the bus, the petitioner crossed the bus in a two wheeler without observing the road traffic and that the petitioner hit against the bus. The petitioner has to prove the age, income, profession, treatment particulars, expenses, etc.

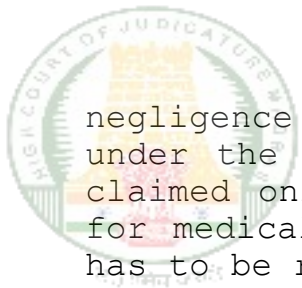
5.A brief substance of the counter filed by the second respondent therein is as follows:

The accident took place due to the rash and negligent driving of the bus driver and hence, the second respondent is not liable to pay compensation to the petitioner.

6.On the side of the claimant, two witnesses were examined and 34 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.4,64,385/- (Rupees Four Lakhs Sixty Four Thousand Three Hundred and Eighty Five only) as compensation to be paid by the appellant herein. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

7.On the side of the appellant, it is stated that the Tribunal has erred in holding that the driver of the bus is only responsible for the accident. The negligence was on the side of the first respondent who overtook the bus and dashed against the side portion of the bus. She lost her balance and fell down and had invited the accident. The award is very excessive.

8.On the side of the appellant, it is further stated that the bus stopped in the bus stop to drop the passengers. It was the petitioner who hit the side portion of the bus. Contributory



negligence has to be fixed on the petitioner. The amount awarded under the medical head is to be reduced. The first respondent has claimed only Rs.2,00,000/- (Rupees Two Lakhs only) as compensation for medical expenses and hence, the award for the medical expenses has to be reduced.

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9.On the side of the first respondent, it is stated that the first respondent has sustained 40% disability and the Tribunal has awarded a sum of Rs.2,000/- per percentage, which is reasonable. The first respondent sustained hip fracture and she took treatment as 'in patient' for three times for a period of 45 days in three spells. The petition was filed at the time of treatment and the medical expenses sustained by the petitioner at the time of filing the petition is Rs.2,00,000/-. Subsequently, the first respondent took treatment and produced the medical bills and the Tribunal is correct in awarding the amount for medical expenditure. It is further stated that the medical bills were not actually disputed. When there is no dispute raised before the Tribunal, the appellant is not entitled to raise a new point in the appeal.

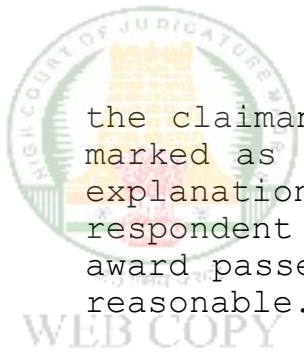
10.On the side of the second respondent, it is stated that the appellant failed to prove the contributory negligence on the part of the claimant. It was the bus driver, who was negligent. He suddenly started the bus and turned the bus on the right side without any indication.

11.The appellant has not examined any witness. No document was filed to show that it was the claimant, who invited the accident. Ex.P1, FIR was lodged against the bus driver, Ex.P2 and Ex.P3, M.V. Reports were marked. Even the bus driver of the respondent vehicle was not examined. In the above circumstances, it is decided that it was the bus driver who was responsible for the accident.

12.On the side of the appellant, it is stated that the award is excessive and the disability was proved by the evidence of P.W.1 and P.W.2. Ex.P10, wound certificate, Ex.P25, Ex.P7, C.T. Scan reports, Ex.P34, Ex.P33, discharge certificates were marked. P.W.2 has deposed that the disability is 40.11%. The Tribunal has fixed the disability as 40%. For 40% disability, the Tribunal has awarded Rs.2,000/- for each percentage of disability, which is reasonable.

13.The medical bills are disputed. On the side of the appellant, it is stated that in the claim petition, the claimant has claimed a sum of Rs.2,00,000/- towards medical expenses but the Tribunal has awarded a sum of Rs.3,28,530/-, which is very excessive.

14.It is seen that the first respondent took treatment as 'in patient' in three spells. The discharge summaries were marked as



the claimant took treatment as 'in patient'. The medical bills were marked as Ex.P11, Ex.P13, Ex.P14, Ex.P20 to Ex.P24 and Ex.P26. The explanation given by the first respondent is satisfactory. The first respondent has filed various bills issued by the hospitals and the award passed by the Tribunal under the head of medical expenses is reasonable.

15.The Tribunal has fixed Rs.26,635/- (Rupees Twenty Six Thousand Six Hundred and Thirty Five only) towards transport expenses and has marked the trip sheet, Ex.P25. The receipt for payment was marked as Ex.P28. The Tribunal has fixed the transport expenses on the basis of Ex.P27 and Ex.P28, which is reasonable. The Tribunal has awarded Rs.20,000/- (Rupees Twenty Thousand only) towards pain and sufferings and the first respondent has undergone treatment as 'in patient' for 45 days and the fracture is on the hip. Considering the nature of injuries, considering the period of treatment, the fixation of award for pain and sufferings is reasonable. The Tribunal has awarded a sum of Rs.5,000/- (Rupees Five Thousand only) towards extra nourishment and Rs.4,000/- (Rupees Four Thousand only) towards attendant charges, which are reasonable.

16.As discussed above, there is nothing sufficient enough to interfere in the orders passed by the Tribunal. Hence, it is decided that the claimant is entitled to a sum of Rs.4,64,385/- (Rupees Four Lakhs Sixty Four Thousand Three Hundred and Eighty Five only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

17.The first respondent is directed to deposit Rs.4,64,385/- (Rupees Four Lakhs Sixty Four Thousand Three Hundred and Eighty Five only) with 7.5% interest from date of the claim petition till the date of realization with costs and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, as per the ratio fixed by the Tribunal with proportionate interest after deducting any amount received by her earlier. Excess amount, if any deposited shall be refunded to the first respondent herein. The claimant is not entitled for interest for the default period, if there is any. In the result, this Civil Miscellenaous Appeal is **dismissed**. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

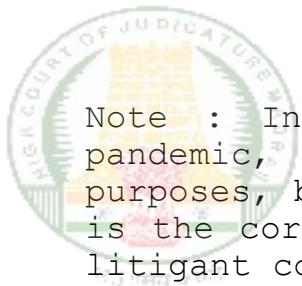
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Sub Assistant Registrar(CS)

MRN

<https://hcservices.ecourts.gov.in/hcservices/>



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.

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To

1.The Principal Sub Judge,
The Motor Accidents Claims Tribunal,
Kumbakonam.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-31441[F] dated
06/10/2021)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-31158[F] dated 05/10/2021)

+1 CC to M/s.A.SHAJAHAN, Advocate (SR-31320[F] dated 06/10/2021)

C.M.A.(MD)No.1115 of 2014

05.10.2021

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