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C.M.A(MD) No.1331 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.09.2021

Delivered on : 25.10.2021

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.M.A(MD) No.1331 of 2014

and

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

The Managing Director,
Tamil Nadu State Transport Corporation,
Pillai Thanner Pandal,
Thirumayam Road,
Pudukkottai.

... Appellant/Respondent

Vs.

Kulandhaivelu

... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehilces Act, 1988, against the judgment and decree made in M.C.O.P.No.213 of 2010, dated 20.01.2014, on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Court, Pudukkottai.

For Appellant : Mr.P.Prabhakaran

For Respondent : Mr.B.Sekar

for Mr.P.Ganapathi Subramanian

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 20.01.2014, made in M.C.O.P.No.213 of 2010, on the file of the Motor Accident Claims Tribunal -Additional District and Sessions Court, Pudukkottai.

2.The appellant herein is the respondent and the respondent herein is the claimant in the original claim petition.

3.Brief substance of the petition in M.C.O.P.No.213 of 2010 is as follows:-

On 22.12.2009, when the petitioner and one Palanivelu were travelling in a two wheeler bearing Registration No.TN-55-K-5065 that was driven by one Beemaraj, at that time, a bus bearing Registration No.TN-55-N-0191 was driven by its driver in a rash and negligent manner, without observing the road rules, hit against the two wheeler. The petitioner sustained injuries and he was taken to Thanjavur Medical College Hospital. The another pillion rider, viz., Palanivelu and the rider of the vehicle/ Beemaraj died due to the accident. The petitioner claimed a sum of Rs.10,00,000/- as compensation.



4. Brief substance of the counter filed by the respondent M.C.O.P.No.213 of 2010 is as follows:-

The manner of accident as narrated in the claim petition is wrong. On 22.12.2009, the bus was taken for a Trip from Sengipatti to Keeranur. The driver of the Bus drove the vehicle in a moderate speed, observing the road rules. It was the petitioner and his friends who came in a motorcycle as Triples in a drunken mood and dashed against the bus. The driver of the respondent is not responsible for the accident. The owner of the two wheeler and the insurer of the two wheeler are necessary parties. The rider of the two wheeler was not having valid driving licence and the petition is to be dismissed.

5. On the side of the petitioner, three witnesses were examined and sixteen documents were marked. On the side of the respondent, one witness was examined and no witness was marked.

6. The Tribunal, after considering both sides, awarded a sum of Rs.1,24,200/-, (Total award amount Rs.1,38,000/-, 10% deducted due to negligence on the part of the claimant which is Rs.13,800/-), as compensation. Against the same, the respondent /appellant filed this Appeal.

7. On the side of the appellant, it is stated that the Tribunal failed to fix the entire negligence on the driver of the two wheeler. Three persons came from the opposite direction in a Zig-Zag manner and in a drunken mood, on the middle of the road and they lost their control and dashed against the bus and invited the accident themselves. At least 50% of the contributory negligence has to be fixed on the injured. The Tribunal is wrong in fixing Rs.2,000/- per percentage of disability. The Tribunal awarded a sum of Rs.40,000/- towards pain and suffering, Rs.30,000/- for loss of amenities, Rs.5,000/- towards transport expenses, Rs.3,000/- for extra nourishment and all the award under various heads is excessive.

8. On the side of the appellant, it is stated that there was loss of balance, while travelling as Triples in a two wheeler. The two wheeler was meant to accommodate only two persons and not three persons. By riding in a two wheeler as Triples, the claimant is negligent. At least 50% contributory negligence has to be fixed on the side of the claimant.

9. On the side of the respondent/claimant, it is stated that the claimant is not in a position to continue his earlier work, he was inpatient for 42 days. The Tribunal unreasonably reduced the percentage of disability.



10. Since the claimant and others travelled as Triples in a two wheeler, the Tribunal has fixed contributory negligence as 10% (Rs.13,800/-). On the side of the appellant, it is stated that the contributory negligence should be enhanced to 50%. F.I.R./Ex.P1 and charge sheet / Ex.P6 were filed against the driver of the bus. Any how, even from the claim petition, it is clear that the injured travelled as Triples in the two wheeler. In view of the same, Contributory negligence is fixed as 25%. The award under various head as fixed by the Tribunal are reasonable. After deducting 25% (Rs.34,500/-) towards contributory negligence, the claimant is entitled to Rs.1,03,500/-

11. Hence, this Civil Miscellaneous Appeal is partly allowed and the award, dated 20.01.2014, made in M.C.O.P.No.213 of 2010, on the file of the Motor Accident Claims Tribunal -Additional District and Sessions Court, Pudukkottai, is reduced **from Rs.1,24,200/- to Rs.1,03,500/-**.

12. The appellant / Transport Corporation is directed to deposit the entire compensation of **Rs.1,03,500/-** along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks 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 entire amount, after deducting the amount, if any, already received by him. Excess amount, if any, shall be refunded to the appellant. The Claimant is not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar (CS)

Ls

To

1. The Motor Accident Claims Tribunal
Additional District and Sessions Court,
Pudukkottai.



C.M.A (MD) No.1331 of 2014

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-32467[F] dated
25/10/2021)

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