**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	20.01.2021
Date of Judgment	23.02.2021

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CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A (MD) No.556 of 2016andCMP (MD) No.6611 of 2016

Tamil Nadu State Transport Corporation Limited,
Through its General Manager,
Office at Trivandrum Road,
Vannarapettai, Tirunelveli-3.

: Appellant/1st Respondent

Vs.

1.Murugan
2.K.Saravana Kumar
3.ICICI Lombard General Insurance Company Ltd.,
through its Branch Manager,
Branch Office at Madurai Road,
Tirunelveli Junction.

: 1st Respondent/Petitioner

: Respondent2 &3/ Respondent2 &3

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 09.04.2014 made in MCOP No.179 of 2013 on the file of Motor Accident Claims Tribunal (I Additional District Judge), Tirunelveli.

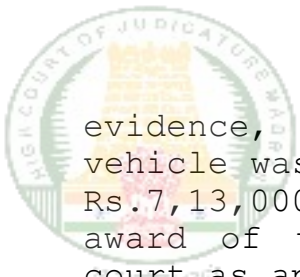
For Appellant	: Mr.P.Prabhakaran
For 1 st Respondent	: Mr.Y.Prakash
For 2 nd Respondent	: No appearance
For 3 rd Respondent	: Mr.K.K.Ramakrishnan

JUDGMENT

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (I Additional District Judge), Tirunelveli, in MCOP No.179 of 2013, dated 09.04.2014.

2.The brief facts of the case are that on 15.01.2013 at about 9.15 hours, when the claimant riding the motor cycle TN-76-M-5512 in Veeranam to V.Reddiarpatti Main Road, east of Kadanganeri bus stop, the Transport Corporation Bus TN-72-N-1032 came from the opposite side in a rash and negligent manner and dashed against the motor cycle. In that process, the claimant was thrown away from the motor cycle and sustained injuries and immediately, he was taken to TVMC Hospital, Tirunelveli, where he took treatment as inpatient between 15.01.2013 and 17.01.2013. The claimant, who suffered injury sought compensation of Rs.10,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

3.The Tribunal, upon consideration of oral and documentary



evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.7,13,000/- together with interest @ 7.5% p.a. Challenging the award of the tribunal, the Transport Corporation is before this court as appellant.

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4. Heard both sides and perused the materials available on record.

5. The dispute is in respect of negligence, liability and quantum. The learned counsel appearing for the appellant/1st respondent argued that the rider of the two wheeler TN-76-H-5512 had only LLR at the time of accident and the rider of the above vehicle had no valid driving licence at the time of accident and without valid driving licence driving a vehicle amounts to violation of Motor Vehicle Rules and there was negligence on the part of the rider of the two wheeler TN-76-H-5512 and there was no negligence on the part of the driver of TNSTC bus and hence, the appellant/1st respondent is not liable to pay compensation to the claimant.

6. On the other hand, the learned counsel appearing for the 1st respondent/claimant argued that on the date of the accident, the claimant drove his vehicle after following rules, but the driver of the Transport Corporation Bus came in the opposite direction in a rash and negligent manner and dashed against the two wheeler and the accident did not occur due to the rash and negligent driving of the claimant and hence, the appellant/1st respondent is liable to pay compensation.

7. The main contention raised on the side of the appellant/1st respondent is that the injured drove his vehicle without valid driving licence, since he had only LLR and hence, it amounts to violation of Motor Vehicles Rules. To prove it, on the side of the appellant/1st respondent, the RTO official was examined as RW2. RW2 deposed that at the time of accident, the injured had only LLR and the injured has not produced his driving licence. When a person, who hold LLR must drive in his vehicle with one pillion rider, who had valid driving licence. But in this case, the injured has not stated either in his petition or during his evidence that he drove the vehicle with a qualified person as pillion rider, who had valid driving licence. Hence, it is held that the injured without any driving licence drove the vehicle. It is to be noted that FIR was registered against the driver of the Transport Corporation Bus. Hence, it reveals that the injured also drove his vehicle in a negligent manner. Hence, this court finds composite negligence on the part of the injured at 30% and composite negligence on the part of the driver of the offending vehicle at 70%.

8. The next contention raised on the side of the appellant/1st respondent is that at the time of accident, the age of the injured is 36 years, the correct multiplier for arriving loss of income is 15. But the tribunal adopted 16 as multiplier and hence, the



multiplier adopted by the tribunal is not correct and hence, for arriving loss of income, 15 has to be taken as multiplier.

9. In this case, the claimant has stated in his petition that at the time of accident, his age was 36. It was accepted by the tribunal and fixed the monthly income as Rs.4,500/-. But for arriving loss of income of the claimant, the tribunal adopted 16 as multiplier, which is not correct. The correct multiplier is 15. By doing so, the loss of income of the injured is calculated at Rs.4,86,000/- (Rs.4,500/- x 12 x 15 x 60%). In so far as the other heads, the compensation awarded by the tribunal is reasonable and accordingly, they are confirmed. Accordingly, the award of the tribunal is modified as Rs.6,80,600/- (Rs.4,86,000 + Rs.1,94,600/-). Since, negligence is fixed at 70% on the part of the Transport Corporation Bus and 30% on the part of the injured, the claimant is entitled to **Rs.4,76,420/-** (Rs.6,80,600/- - Rs.2,04,180/-) together with interest @ 7.5% p.a. from the date of petition, till the date of realization.

10. In the result, this Civil Miscellaneous Appeal is partly allowed. The negligence is fixed at 70% on the part of the driver of the Bus and 30% on the part of the injured claimant. The appellant Transport Corporation is directed to pay the amount of negligence fixed by this court to the claimant, within a period of six weeks from the date of receipt of a copy of this judgment, with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. On such deposit the claimant is entitled to withdraw the entire amount without filing any formal petition before the tribunal. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar (ADII)

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Sub Assistant Registrar (CS)

To,

1. The I Additional District Court
Motor Accident Claims Tribunal, Tirunelveli.

2. The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-6606[F] dated 23/02/2021)
C.M.A (MD) No.556 of 2016
23.02.2021