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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.505 of 2022

K.Karthick

... Appellant/Petitioner

Vs.

The Managing Director,
M/s.Tamilnadu State Transport Corporation
Kumbakonam Limited,
Periyamalungu Parai, Trichy District,
Trichy - 620 001.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the compensation awarded in Judgment, dated 24.09.2021 in M.C.O.P.No.1078 of 2019 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Salem.

For Appellant : Mr.R.Nalliyappan

JUDGMENT

The claimant has filed the above appeal seeking enhancement of the Award passed by the learned Chief Judicial Magistrate (Motor Accident Claims Tribunal), Salem in M.C.O.P.No.1078 of 2019, dated 24.09.2021.

2. The claimant had filed the above M.C.O.P seeking compensation for the injuries sustained by him in a road accident on 10.07.2018 at about 9.00 p.m. The case of the claimant is that on the said date, when he was returning home, after his work on the Kandampatti By-pass road and proceeding East-West, the bus owned by the respondent driven by its driver in a rash and negligent manner, hit the claimant, as a result of which, he had sustained grievous injuries. He was admitted at Salem Neuro Foundation initially for first aid and then shifted to the Government Hospital, Salem, where he was admitted as inpatient and according to the claimant, he was at continuous treatment. The claimant had claimed a sum of Rs.7,00,000/- as



compensation. The petitioner was aged 28 years at the time of accident and as per the claim statement, he was a Tea Master. The respondent, as the owner of the bus, is vicariously liable to compensate the claimant.

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3. The respondent/Transport Corporation had filed its counter affidavit, inter alia contending that the claimant was in an intoxicated state and the accident had occurred solely on the negligence of the claimant. The claimant was admitted at Government Mohan Kumaramangalam College Hospital, Salem, where, it has been reported that his "Breath Smells of Alcohol". All other allegations contained in the claim statement were denied as false.

4. The Tribunal below, on analyzing the evidence, has come to the conclusion that the claimant had contributed to the accident, as he was in an intoxicated state. Therefore, 50% of the liability has been mulcted on him. Thereafter, the Tribunal arrived at a compensation of Rs.2,38,000/-, of which, 50% was deducted towards contributory negligence and the claimant was awarded a sum of Rs.1,19,000/-. Challenging the said award, the appellant is before this Court only on the ground that he had not contributed to the accident and the deduction of 50% towards contributory negligence, according to the learned counsel for the appellant, is very harsh.

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

6. The Tribunal below has considered F.I.R-Ex.P1 and Accident Register -Ex.P2 to hold that the claimant was in an intoxicated state at the time of accident. The duty Doctor has clearly and categorically stated that the claimant's "Breath Smells of Alcohol".

7. Considering the intoxicated state of the appellant and the time at which the accident has taken place, it is clear that the appellant had walked into the middle of the road, as a result of which, the driver of the respondent-bus would not have been in a position to avert the accident, the Tribunal has held the driver of the respondent-bus also equally negligent. The learned Judge, has analyzed the documents, viz., Ex.P1 and P2



and held that the claimant has contributed to the accident. I see no reason as to why I should interfere with this well considered finding. Accordingly, Civil Miscellaneous Appeal is dismissed. No costs.

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SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

srn/ab

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Salem.

Copy to

The Section Officer,
VR Section, Madras High Court,
Chennai.

+1c to Mr.R.Nalliyappan, Advocate SR.18897

C.M.A.No.505 of 2022

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