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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2022

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

C.M.A.No.2077 of 2018 &
CMP No.16188 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Having Office at Railway Station Road,
Kumbakonam town and Taluk and Munsif

..Appellant/Respondent

vs

R.Packiyaraj

..Respondent/Petitioner

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.01.2017 made in M.C.O.P.No.177 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvarur.

For Appellant .. M/s.D.Venkatachalam

For Respondent .. M/s.M.Thamizhavel

JUDGMENT

The respondent in MCOP No.177 of 2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Tiruvarur, is the appellant herein. The appellant is the Managing Director of the Tamil Nadu State Transport Corporation who questions not only the quantum of award granted as compensation, but also the finding on negligence, whereby the Tribunal held that the accident had occurred only due to the negligence on the part of the driver of the vehicle of the appellant. The grievance of the learned counsel for the appellant is that there was a parallel MCOP which was also tried by the very same Tribunal in MCOP No.176 of 2016 in which, the other vehicle involved in the accident was also shown and negligence was determined at 50% and learned counsel insisted that the said parallel OP may be tagged and disposed of. But



unfortunately, that may be a fact, but at the appellate stage, this Court cannot pass such order.

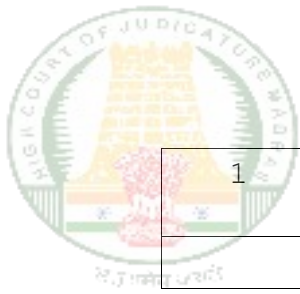
2. It is contended by the learned counsel for the respondent that this particular fact, was also not stated in the counter affidavit by the appellant before the Tribunal and this ground has been raised only before the appellate Court and it cannot be permitted.

3. The said issue can be raised only before the Tribunal, which has to only decide and determine the same. This ground which is raised, would be a ground of law, but not on fact. Contributory negligence and presence of another vehicle is a ground of fact.

4. A perusal of the order now in the appeal shows that the claimant was driving a car bearing Registration No.TN-69-M-7373 in Mayiladuthurai-Thiruvavur Main Road. At that time, there was a head on collision with a Government bus bearing Registration No.TN-68-N-0027. The Tribunal had held that the accident had occurred only due to rash and negligent driving of the Government Transport bus bearing No.TN-68-N-0027. I find no reason to interfere with that reasoning.

5. With respect to quantum of compensation awarded by the Tribunal, it is seen that there was injury sustained by the respondent, including breaking of his teeth and disfigurement of the face, which requires plastic surgery to be done. A sum of Rs.1 lakh has been awarded for disfigurement and for sustaining injury in the accident. The following compensation granted by the Tribunal stands confirmed:

1	Breaking of Teeth and disfigurement of face	Rs.1,00,000/-
2	Pain and suffering	Rs. 50,000/-
3	Extra nourishment	Rs. 40,000/-
4	Damages to clothes and articles	Rs. 1,500/-
5	Transportation expenses during treatment	Rs. 15,000/-
6	Loss of Income during treatment	Rs. 30,000/-
7	Attendant benefits	Rs. 12,000/-
8	Medical expenses vide Exs.3 and 4 (series of receipts)	Rs.3,78,956/-



1	Breaking of Teeth and disfigurement of face	Rs.1,00,000/-
	Total	Rs.6,27,456/-

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6. I find no reason to interfere with the impugned Award passed by the Tribunal and accordingly, this Civil Miscellaneous Appeal stands dismissed. The respondent is permitted to withdraw the amount by making proper application before the Tribunal. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
The Chief Judicial Magistrate
Tiruvarur.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.D. Venkatachalam, Advocate sr 9945

+1 CC to Mr.M.Thamizhavel, Advocate sr 9819.

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GPL(CO)
SP(03/03/2022)