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C.M.A.No.1133 of 2017
and Cross.Obj.No.47 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.1133 of 2017
and C.M.P.No.5626 of 2017
and Cross.Obj.No.47 of 2019

The Managing Director,
Tamil Nadu State Transport
Corporation, Kumbakonam,
Trichy - 620 001.

...Appellant in C.M.A.No.1133 of 2017

C.Gopi

...Appellant in Cross.Obj.No.47 of 2019

Vs.

C.Gopi

... Respondent in C.M.A.No.1133 of 2017

The Managing Director,
Tamil Nadu State Transport
Corporation, Kumbakonam,
Trichy - 620 001

....Respondent in Cross.Obj.No.47 of 2019

PRAYER in C.M.A.No.1133 of 2017: Civil Miscellaneous Appeal filed
under Section 173 of the Motor Vehicles Act, 1988 against the Judgment



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and decree dated 18.01.2016 in M.C.O.P.No. 55 of 2012, on the file of the Motor Accidents Claims Tribunal, I Additional District Judge and Sessions Judge, Vellore.

Prayer in Cross.Obj.No.45 of 2019:- Cross Objection filed under Order 41 Rule 22 of C.P.C to enhance the Award with interest at the rate of 18% per annum.

C.M.A.No.1133 of 2017

For Appellant : Mr.L.Ramanathan

For Respondent : Mr.R.Nalliyappan

Cross.Obj.No.45 of 2019

For Appellant :Mr.R.Nalliyappan

For Respondent :Mr.L.Ramanathan

COMMON JUDGMENT

The Transport Corporation has filed the above appeal challenging the Award passed by the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore in M.C.O.P.No.55 of 2012.

2. The facts which have given rise to the above appeal are as follows and the parties are referred to in the same ranking as before the



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Tribunal.
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The petitioner had filed the above claim petition seeking compensation for the injuries sustained by him in a road accident. It is the case of the petitioner that on 05.05.2010 at about 10.30 a.m., when he was walking on the road to catch the bus, the bus bearing Registration No.TN-45-N-2493 coming from the Arani side towards Gingee was driven by its driver in a rash and negligent manner, as a result it had dashed against his left hand. On account of the accident, the petitioner's left hand and shoulder sustained grievous injuries. Therefore, he had claimed a sum of Rs.5,00,000/- as compensation.

3. The respondent originally filed a counter *inter-alia* denying the allegations contained in the claim statement and contending that the petitioner had attempted to cross the four-way junction without observing on-coming bus and had caused the accident upon himself. The Transport Corporation had further contended that the accident had occurred only on account of the negligence on the part of the petitioner. They had contended that the compensation claimed is on the higher side. Thereafter, an



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additional counter was filed by the respondent-Corporation, in which, they had contended that the bus bearing Registration No.TN-45-N-2493 did not hit the petitioner and he had not come into contact of the said bus and further, the F.I.R had been lodged only on 18.05.2010, nearly 13 days after the accident. Therefore, the Transport Corporation had sought for dismissal of the claim petition.

4. The Tribunal below, on considering the evidence on record, held that the driver of the respondent-Corporation was responsible for the accident on account of his negligence. The Tribunal had also observed that the respondent-Corporation had taken one stand in the original counter and thereafter, they have changed their stand in the additional counter. Ultimately, the compensation was awarded under various heads. The respondent-Corporation had challenged the said Award and the petitioner has filed a cross objection seeking enhancement.

5. The learned counsel appearing for the Transport Corporation would submit that a perusal of Ex.R4 would clearly demonstrate that the



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accident had taken place right in the middle of four way junction and further on all the 4 roads a speed-breaker was fixed right before the junction. Therefore, by no stretch of imagination, can a vehicle be driven in a rash and negligent manner at this junction where every vehicle has to definitely slow down to navigate the speed breaker. A perusal of the sketch which has been prepared on the statement of the claimant would clearly show that petitioner was right in the middle of the road and thereby contributed to the accident. Had the petitioner followed basic road Rules by keeping to extreme left, the accident would not have happened or if he had crossed the road where there was a zebra crossing on a place designated for pedestrian crossing. The learned counsel would further submit that though the sketch prepared by the Police authority shows the existence of a speed-breaker on each of the roads, PW1 in his cross examination would contend that there was no speed-breaker on the road which is contrary to the sketch prepared by the police, which appears to be an attempt to substantiate the contention of the petitioner that the accident had occurred only an account of the rash and negligent driving by the driver of the respondent bus.



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6. Mr.Nalliappan, learned counsel appearing on behalf of the cross objector submitted that the Transport Corporation has taken two different stands in their counter and in their additional counter. Nowhere in the counter have they stated that the bus was not involved in the accident. It is only in the additional counter, which was filed nearly 3 years later that the appellant has come forward with the above statement. He would submit that the accident had occurred in a busy road which would clearly show that there is no chance of the petitioner manipulating the accident. The lodging of delayed F.I.R was only on account of the fact that the petitioner was recuperating from his injuries and as soon as he had recovered he had lodged the F.I.R. In the original counter statement, the respondent has not taken the stand that the vehicle was not involved in the accident. It was only in the additional counter, as an after-thought, the same has been raised. He would also submit that the Tribunal below has not considered the disability suffered by the claimant and has awarded a very meagre amount as compensation.



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7. Heard the learned counsel on either side and perused the materials available on record.

8. The Transport Corporation, at the first instance, has not denied the accident or the involvement of their vehicle in the accident. It is only 3 years later in the additional counter that such a stand has been taken. The impact of the accident, namely, the injuries on the left hand and shoulder of the claimant, would clearly show that the driver has not driven the bus in a rash manner as alleged and this factor was further confirmed by the fact that in each direction of the junction, there are speed-breakers. Therefore, it is impossible for a vehicle to over-speed or drive in a rash and negligent manner. Ex.R1 -Sketch, which is prepared on instructions of the petitioner would clearly show that the accident had occurred in the centre of the road. Admittedly, the respondent was proceeding from Arani to Chenji and he appears to have attempted to cross the road on a junction without waiting for the vehicles to pass. Therefore, the respondent has also contributed equally to the accident. Had he maintained basic road rules without



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Jay-walking, the accident could have been averted. Therefore, the equal liability has to be fastened on the respondent/petitioner. Hence, the driver of the first respondent's bus as well as the petitioner, are equally fastened with contributory negligence. The Award granted by the Tribunal appears to be very reasonable and I see no reason to enhance the same. **Therefore, the cross objection is dismissed.**

9. C.M.A.No.1133 of 2017 is partly allowed. 50% contributory negligence is fastened on the petitioner as well. Therefore, the Transport Corporation is liable to pay 50% (i.e) **Rs.65,000/-** of the compensation awarded by the Tribunal. The appellant-Transport Corporation in C.M.A.No.1133 of 2017 is directed to deposit the said amount to the credit of M.C.O.P.No. 55 of 2012 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the amount now determined by this Court, along with accrued interest and costs



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as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. In case the Transport Corporation had deposited the entire amount, then the balance after satisfying the modified award shall be refunded to the Transport Corporation. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal. Consequently connected miscellaneous petition is closed.

04.11.2022

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To

1. The Motor Accidents Claims Tribunal,
I Additional District Judge and Sessions Judge, Vellore.
2. The Section Officer,
V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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