



C.M.A(MD)No.301 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.10.2022

Pronounced on : 22.11.2022

CORAM

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

C.M.A(MD)No.301 of 2013

Tamil Nadu State Transport Corporation Ltd.,
Rep. by its Branch Manager,
Ranothottam,
Nagercoil,
Kanyakumari District.

...Appellant / 1st respondent

Vs

1.M.Sakthivel

... 1st Respondent/Claimant

2.S.Selvakumar

3.The Branch Manager,
New India Assurance Co., Ltd.,
No.84, Thiruvananthapuram Road,
Palayamkottai,
Tirunelveli.

... Respondents No.2 & 3/Respondents 2 & 3

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 23.01.2008, in M.C.O.P.No.737 of 2005, on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.II), Tirunelveli.



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For Appellant : Mr.S.Royce Emmanuel
For R1 : Mr.J.Selvakumar for R1
For R3 : Mr.B.Vijay Karthikeyan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree, dated 23.01.2008, made in M.C.O.P.No.737 of 2005, on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.II), Tirunelveli.

2.The appellant is the first respondent before the Tribunal, the first respondent herein is the claimant and the second and third respondents are the second and third respondents in the claim petition. The second respondent before the Tribunal set *ex-parte*.

3.A brief substances of the claim petition are as follows:

On 16.08.2004, the petitioner and one Glory Padma travelled in a Auto bearing Registration No.TN 74 C 5315 from Pattapuram to Valliyoor along the Nagercoil – Tirunelveli Road near Valliyoor Kancordia School. At that time a Motor Cycle came in a rash and negligent manner. At the same



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time a bus bearing registration No.TN 74 N 0792, which was driven by its driver in rash and negligent manner, dashed against the Auto. The petitioner sustained injury. He was admitted in Nagercoil Thiraviyam Ortho Hospital as Inpatient. The petitioner claim a sum of Rs.5,00,000/- as compensation.

4.A brief substance of the counter affidavit filed by the first respondent is as follows:

The petition has to be dismissed. The age, income and profession of the petitioner ought to be proved and the manner of accident is also to be proved. The bus was driven by its driver in slow and cautious manner. It was the Auto that came along the wrong side of the road and dashed against the left side of the bus. The Auto driver to avoid hitting a Motor Cycle, has turned the vehicle on the wrong side of the road and he hit against the bus. The accident took place due to the negligence of the Auto Driver. The claim is excessive.

5.A brief substance of the counter affidavit filed by the third respondent is as follows:

The accident has taken place only due to the rash and negligent



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driving of the first respondent driver. The FIR was registered only against the first respondent driver. The third respondent is not liable to pay any compensation. The nature of injuries, mode of treatment, expenses for the treatment, age, income and profession of the petitioner ought to be proved. The claim is excessive.

6.Before the Tribunal two witnesses were examined, 11 documents were marked on the side of the petitioner. One witness was examined and two documents were marked on the side of the respondents. The Tribunal fixed the compensation at Rs.4,65,596/- (Rupees Four lakhs Sixty Five Thousand Five Hundred and Ninety Six only). Out of which, 25% of the amount to be paid by the first respondent and 75 % of the amount to be paid by the second and third respondents.

7.Against the award, the first respondent preferred this appeal on the following grounds:

The Tribunal failed to consider the oral and documentary evidence on the side of the respondents. The Tribunal is wrong in fixing the negligence on the side of the appellant. The Tribunal awarded Rs.3,06,000/- towards loss of



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income by fixing the monthly income as Rs.1,500/- and by applying multiplier 17, which is wrong. The Tribunal fixed Rs.74,596/- towards Medical Expenses, Rs.50,000/- for pain and sufferings, Rs.5,000/- for Transportation, Rs.25,000/- for shock and mental agony, Rs.5,000/- for extra nourishment, which are all excessive. The total award amount is highly excessive.

8. On the side of the appellant, it is stated that the accident has occurred only due to the rash and negligent driving of the second respondent driver. The FIR was registered against the bus driver. In the FIR it is stated that the accident has occurred due to the rash and negligent driving of the bus and the auto drivers. It is seen that to avoid hitting a two wheeler the auto driver suddenly turned the vehicle and it is seen that at the time of accident, the bus was also driven in the rash and negligent manner. In the above circumstances, the tribunal fixed the liability on both the bus and the auto driver and has ordered, 25% of the compensation is to be paid by the appellant and 75 % is to be paid by the second and third respondents. Even in the appeal, the appellant has admitted the appellant's liability up to 25%. In view of the above circumstances, it is decided that there is nothing sufficient enough to interfere in the order of the Tribunal.



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9. With regard to the quantum, the Tribunal has fixed the monthly income at Rs.1,500/- and adopted the multiplier method 17. Since the claimant was having 100% disability, the adopting multiplier method is reasonable. The compensation awarded under various heads are all reasonable. Hence, there is nothing sufficient enough to interfere in the order of Tribunal.

10. Hence, this Appeal is dismissed and the compensation awarded by the Tribunal is hereby confirmed.

(i) The appellant - Transport Corporation, is directed to deposit 25% of the entire compensation of Rs.4,65,596/- (if not already deposited) and the respondents 2 and 3 are directed to deposit 75 % of the above said compensation amount (if not already deposited) jointly or severally, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the Transport Corporation and the respondents 2 and 3, the first respondent / claimant is permitted to withdraw



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the amount, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

22.11.2022

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal / Additional District Court (Fast Track Court No.II), Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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