



C.M.A(MD)No.381 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.06.2022

Pronounced on : 05.07.2022

CORAM

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

C.M.A(MD)No.381 of 2019

and

C.M.P.(MD)No. 4661 of 2019

Tamil Nadu Transport Corporation,
Maruthupathi,
Karaikudi
[Through its Branch Manager]

... Appellant

Vs

Iyyappan

... Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor vehicle Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal (Subordinate Judge), Devakottai, in M.C.O.P.No. 13 of 2016 dated 07.12.2017.

For Appellants : Mr.D.Sivaraman

For Respondents : Mr.V.Sankarapandian



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JUDGMENT

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This appeal is filed against the order in M.C.O.P.No.13 of 2016 on the file of the Motor Accident Claim Tribunal /Subordinate Judge, Devakottai. The appellant is the respondent and the respondent herein is the claimant in the claim petition.

2.Brief substance of the claim petition is as follows:

On 27.06.2014, when the claimant was travelling along the left side of the road, a bus bearing registration No. TN 63 N 1011 was driven by its driver in a rash and negligent manner and when a lorry was over taking the bus, the bus driver adjusted the bus from left to right and dashed against the petitioner who came in a two wheeler from the opposite direction. The petitioner sustained severe injuries and sustained permanent disability. The petitioner claimed Rs.24,00,000/- as compensation.

3.Brief substance of the counter filed by the respondent in the claim petition is as follows:

The manner of accident as narrated in the petition is wrong. The driver



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of the bus followed the traffic rules and drove the vehicle in a careful manner.

But the rider of the motor bike bearing registration No.TN 63 T 9401 who was under the influence of alcohol, drove the motor bike in a rash and negligent manner and dashed against the bus. The claim petitioner is responsible for the accident and hence the respondent is not liable to pay any compensation to the petitioner. The owner and the insurer of the motor bike are necessary parties. Hence the petition is bad for non-joinder of necessary parties. The petitioner has to prove that he had effective driving license at the time of accident. The nature of injuries is not admitted. The claim is excessive.

4.Two witnesses were examined and 19 documents were marked on the side of the petitioner. One witness was examined and two documents were marked on the side of the respondent. The Tribunal awarded a sum of Rs. 6,08,583/- as compensation to be paid by the respondent. Against that award, the appellant has come forward with this appeal.

5.On the side of the appellant, it is stated that the Tribunal has held that the accident took place only due to the rash and negligent driving of the



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claimant. The First Information Report was lodged only against the claimant. The First Information Report and the final report were filed against the claimant. The Tribunal failed to consider the evidence of R.W.1. The Doctor who gave treatment was not examined. The disability fixed by the Tribunal is excessive. The amount awarded for disability under various other heads are excessive.

6.On the side of the respondent it was stated that the petitioner was admitted in the hospital as an inpatient and at that time, the bus driver lodged a complaint and a First Information Report came to be registered against the claimant. There is no medical evidence to prove that the claimant was under the influence of alcohol. The First Information Report was not a conclusive proof and pray the appeal to be dismissed.

7.Verification of the records reveals that the First Information Report and the final report were against the claimant. The manner of accident as narrated in the petition reveals that the petitioner was travelling along the centre of the road or along his right side of the road. There is no possibility of the bus to cross the entire road and hit the claimant who was riding along his



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left side of the road. Hence it is decided that the respondent herein ought to have travelled atleast at the middle of the road or on his right side of road. In the above circumstances, it is decided that the claimant also has contributed to the accident and the claimant is liable for contributory negligence and the contributory negligence is fixed at 20%.

Award of the Tribunal = Rs.6,08,583/-

Contributory negligence(20%) = Rs.1,21,716/-
(20/100 x 6,08,583 = 1,21,716)

Modified Award amount = (Rs.6,08,583 - Rs.1,21,716)
Rs. 4,86,867/-

rounded off = **Rs.4,87,000/-**

8.The appeal is partly allowed and after deducting 20% towards the contributory negligence the award amount is modified as Rs.4,87,000/- (Rupees Four Lakhs Eighty Seven Thousand only) with accrued interest.

9.The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.6,08,583/- to Rs.4,87,000/- which shall carry interest at the rate of 7.5% per annum.



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(ii) The Appellant Insurance company, is directed to deposit the entire compensation of Rs.4,87,000/- (if not already deposited) 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 to the credit of M.C.O.P.No.13 of 2016 on the file of the Motor Accident Claim Tribunal (Subordinate Judge), Devakottai, within a period of eight weeks from the date of receipt of a copy of this order, less any amount already deposited.

(iii) On such deposit being made by the appellant/insurance company, the respondent / claimant is permitted to withdraw the entire award amount, with interest and cost less any amount already withdrawn by him. The claimant is not entitled for interest for the default period if there is any. Consequently, connected miscellaneous petition stands closed.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The Judge, Motor Accident Claims Tribunal (Subordinate Court),
Devakottai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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