



C.M.A(MD)No.381 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.10.2022

Pronounced on : 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.381 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
1, Railway Station New Road,
Kumbakonam Kottam.

: Appellant / Respondent

Vs.

Kabil

: Respondent/Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment award passed in M.C.O.P.No.345 of 2018, dated 05.02.2021 on the file of the MACT (Special District Court), Thanjavur.

For Appellant : Mr.P.M.Vishnuvardhanan

For Respondent : Mr.M.Pitchai Muthu



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J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.345 of 2018, dated 05.02.2021 on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur.

2.The Appellant/Tamil Nadu State Transport Corporation, who was made liable to pay compensation of Rs.18,72,466/- with interest at 7.5% per annum to the claimant/injured for the disability suffered by him, due to an accident occurred on 05.12.2016, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. The case of the claimant is that on 05.12.2016 at about 10.40 pm., when the injured/claimant was proceeding in his Splendor plus Motorcycle bearing Registration No.TN-49-AM-1690 with one Rathinam as pillion rider and after filling petrol, while moving in Orathanadu Anna Salai, a bus bearing Registration No. TN-49-N-1718, which came in the opposite direction in a rash and negligent manner, had dashed against the two wheeler and as a result of which, the rider and the



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pillion rider sustained serious injuries and that the accident was occurred only due to the rash and negligence of the bus driver and hence a case was registered against the bus driver in Crime No.658 of 2016 for the offence under Sections 279 and 337 IPC, on the file of the Orathanadu Police Station.

4.It is the further case of the claimant that the claimant was studying B.E., Mechanical Engineering and in the part time job, he was earning Rs.25,000/- per month; that he suffered permanent disability, due to the accident and that he was not in a position to do anything as before.

5.The defence of the appellant/Transport Corporation is that on 05.12.2016 at about 09.50 pm, the bus driver had taken the trip from Pattukottai Bus Stand towards Thanjavur; that when the bus was proceeding near Orathanadu roundana Anna salai, the driver after reducing the speed, had attempted to turn the bus towards west and at that time, two wheeler bearing Registration No.TN-49-AM-1690, came in the opposite direction in a rash and negligent manner, had dashed against the front side of the bus and the two wheeler rider invited the accident; that the two wheeler rider, without possessing driving license



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and without wearing helmet, had driven the two wheeler with high speed and caused the accident and that the bus driver was not at fault.

6.During trial, the claimant has examined himself as P.W.1 and Doctor V.Jeyabalan as P.W.2 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The appellant/Transport Corporation has examined its driver, Thiru.Kalaiselvan as R.W.1 and adduced no documentary evidence. The disability certificate issued by the Medical Board has been exhibited as Ex.C.1.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award, dated 05.02.2021, holding that the bus driver and the motorcycle rider were responsible for the accident and apportioned the liability at 90% and 10% respectively and directed the Transport Corporation to pay a sum of Rs.18,72,466/- with interest at 7.5% per annum and costs to the respondent/claimant. Aggrieved by the said award, the Transport Corporation has come forward with the present appeal.



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8.The points for consideration are :

(i) Whether the Tribunal erred in mulcting liability to the extent of 90% on the bus driver, despite showing that the claimant alone without driving license, without wearing helmet, had driven the two wheeler in a rash and negligent manner and caused the accident ?

(ii) Whether the impugned award, dated 05.02.2021 is liable to be interfered with?

9.The learned counsel for the appellant would submit that the claimant has conveniently suppressed the true facts and filed the claim petition as if, he sustained injury due to the negligent driving of the bus driver, which is baseless and unsustainable; that the claimant alone invited the accident on his own negligence, while travelling in his two wheeler and that too without wearing helmet and not having any valid driving license; that the Tribunal, without any basis and materials, had completely ignoring the contentions raised in the counter, has passed the award mechanically and that therefore, the impugned order is liable to be set aside.



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10.It is pertinent to note that the appellant/Transport Corporation has challenged the liability mulcted on it and not the quantum of compensation granted by the Tribunal.

11.The claimant, in order to prove the manner of the accident, has examined himself as P.W.1 and he would say that on 05.02.2021 at about 10.40 pm, when he was proceeding in his Splendor plus motorcycle with Rathinam as pillion rider and after getting petrol in the petrol bunk, while proceeding in the Orathanadu Annasalai from north to south, the bus bearing Registration No. TN-49-N-1718, which came in the opposite direction from south to north in a rash and negligent manner and without sounding horn, came to the wrong side and dashed against the two wheeler and as a result of which, both of them had sustained serious injuries and that the accident was occurred only due to the rash and negligent driving of the bus driver.

12. The claimant in his cross examination would say that he was possessing driving licence at the time of accident; that the pillion rider was not wearing helmet at the time of accident and that he would deny



13. As already pointed out, the Transport Corporation has examined its driver as R.W.1 and R.W.1 in his chief examination would reiterate the contentions raised in the counter statement with regard to the manner of the accident. But in cross examination, he would say that the accident was occurred in the night time, that there was no traffic congestion in the roundana at that time and that criminal case was registered against him, but it was wrongly registered against him.

14. Admittedly, FIR was registered against R.W.1 bus driver. Though R.W.1 has alleged that the FIR was wrongly registered against him, it is not his case that he has preferred any complaint before the Police or before the higher Police Official through his department against the two wheeler rider or for registering wrong case against him.

15. The Tribunal considering the evidence of P.W.1 and R.W.1 has come to a decision that both of them are responsible for the accident and apportioned the liability at 90% on the bus driver and 10% on the rider of the two wheeler.



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16.As rightly contended by the learned counsel for the appellant/Transport Corporation, the respondent/claimant has not preferred any appeal or any cross appeal, challenging the liability mulcted on him. On considering the contentions put forth by both the parties and the evidence of the claimant and that of the bus driver, the decision of the Tribunal in mulcting 90% liability on the appellant cannot be found fault with.

17.As already pointed out, the appellant has not challenged the quantum of compensation. P.W.2 Doctor has given disability certificate under Ex.P.10, fixing the disability at 80% . The Medical Board, after examining the claimant, has issued the disability certificate under Ex.C.1, fixing the disability at 60%. The Tribunal, considering the evidence available, has rightly accepted the disability fixed by the medical board at 60%. Since the claimant was studying B.E., Mechanical Engineering at the time of accident, the Tribunal has rightly fixed the notional income at Rs.6,000/- and by adding 40% towards future prospects, has fixed the annual income at Rs.1,00,800/- as per the dictum laid down by the Hon'ble Supreme Court in ***Smt.Sarala Varma and others Vs. Delhi***



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Transport Corporation and another reported in *2009(2) TN MAC 1*
(SC).
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19.The Tribunal has rightly adopted the multiplier 18 and arrived at Rs.10,88,640/- and after deducting 10% for the liability mulcted on the injured, fixed the loss of income at **Rs.9,79,776/-** as loss of income. The Tribunal has awarded **Rs.10,000/-** for extra nourishment; **Rs.10,000/-** towards attendant charges; **Rs.10,000/-** for transport expenses and **Rs. 8,62,690/-** for medical expenses and arrived at **Rs.18,72,466/-** as total compensation payable to the claimant. The appellant has not canvassed any other reason or grounds to impugn the award. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

20.In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 05.02.2021 passed in M.C.O.P.No.345 of 2018 on the file of the Motor Accident Claims Tribunal/Special District Court,



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Thanjavur, is confirmed. The appellant/Transport Corporation is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the amount, with accrued interests and costs, on due application before the Tribunal. Parties are directed to bear their own costs.

28.11.2022

Index : Yes : No
Internet : Yes : No
das

To

- 1.The Motor Accident Claims Tribunal/
Special District Court), Thanjavur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

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