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C.M.A.No.939 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.939 of 2018

C.Palanisamy

... Appellant

Vs.

1.The Managing Director
Tamilnadu State Transport Corporation (Salem),
Dharmapuri-5

2. S.Marappan

3. Divisional Manager
United India Insurance Co. Ltd.
Vellore

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation awarded in decree and Judgment in M.C.O.P. No.263 of 2010 dated 28.11.2011 on the file of the MACT/Additional District Court (FTC), Tirupattur, Vellore District.

For Appellant : Mr.Pa.Sudesh Kumar

For Respondents : R1- No Appearance
R3- Served, No Appearance
R2- Not ready



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C.M.A.No.939 of 2011



JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant for enhancement of compensation awarded by the Motor Accident Claims Tribunal/Additional District Court (FTC), Tirupattur, Vellore District, in M.C.O.P. No.263 of 2010 dated 28.11.2011.

2. The appellant is the claimant. The Government bus bearing Regn. No.TN-29-N-1641 which is involved in the accident, belongs to the 1st respondent. The 2nd respondent is the owner and 3rd respondent is the insurer of the private bus which was driven by the claimant, at the time of accident.

3. The claimant is a Driver. On 23.10.2006, the claimant was driving a private bus bearing Regn. No.TN-30-F-9396 belongs to the 2nd respondent and insured with the 3rd respondent herein, with necessary lights, keeping to the extreme left side of the road. At about 6.15 p.m., while he was driving the bus on the Krishnagiri-Dharmapuri Road, at Jagadhap Junction near Paiyur, a Government bus bearing Regn. No.TN-29-N-1641, belongs to the 1st respondent, came in a rash and negligent manner and dashed against the claimant's bus due to which, the claimant sustained injuries and



subsequently admitted in the hospital.

4. After taking treatment, the claimant had filed a claim petition in M.C.O.P. No.263 of 2010 on the file of the Motor Accident Claims Tribunal/Additional District Court (FTC), Tirupattur, Vellore District, claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the accident stating that after the accident, he was getting frequent chest pain, unable to breath freely as before, unable to raise, bend, stretch the right hand. Right hand and shoulder movements are painful and restricted. Unable to lift or carry any weight in the right hand. Further, unable to sit, stand, squat, bend, walk and unable to drive any vehicle and also not able to do any normal work as before.

5. Before the Tribunal, on the side of the appellant/claimant, the appellant/claimant himself was examined as P.W.1 and he has spoken about the manner of accident and the doctor was examined as P.W.2 for proving the disability of the appellant/claimant. 10 documents were marked as Ex.P.1 to Ex.P.10. Ex.P.1 is FIR, Ex.P.2 is the Wound Certificate, Ex.P.3 is the copy of Insurance Policy, Ex.P.4 is the report of the Motor Vehicle Inspector issued



for Government Bus driven by the 1st respondent, Ex.P.5 is the report of the Motor Vehicle Inspect issued for bus which the appellant drove at the time of accident, Ex.P.6 is the Driving Licence, Ex.P.7 is the medical bills, Ex.P.8 is the Rent Receipt, Ex.P.9-X-ray and Ex.P.10 is the disability certificate. On the side of the respondents, one witness was examined as R.W.1 and 2 documents were marked as Ex.R1 and Ex.R2

6. The Tribunal, on hearing the arguments of the learned counsel on either side and considering the materials, fixed 50%-50% negligence on the drivers of both the buses and awarded compensation of Rs.68,500/- and directed the 1st respondent/Transport Corporation and 3rd respondent/Insurance Company, to pay each 50% of the compensation amount. Aggrieved by the same, the claimant has filed the present appeal for enhancement of compensation.

7. The learned counsel for the appellant/claimant submitted that the Tribunal has wrongly fixed contributory negligence of 50% on the appellant/claimant. He would submit that in the said accident, the appellant/claimant alone had sustained injuries and the driver of the 1st



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respondent/Transport Corporation, did not suffer any injury, whereas, the Tribunal has wrongly fixed contributory negligence of 50%-50% on the claimant as well as the driver of the opposite bus belongs to the 1st respondent/Transport Corporation and the Tribunal has observed that if the appellant/claimant was so conscious, he could have avoided the accident which is against materials. There is no evidence to show that the appellant/claimant has also contributed his negligence for the accident. The accident had occurred only due to the rash and negligent driving of the driver of the 1st respondent/Transport Corporation. Though the Tribunal has observed that the F.I.R. is registered only against the appellant/claimant, the F.I.R. is not an Encyclopedia and based on the F.I.R., negligence cannot be fixed and the liability cannot be fastened against the appellant/claimant based on the F.I.R. He would further submit that though the doctor assessed the disability of the appellant/claimant at 42%, the Tribunal fixed the disability at 37% and granted only Rs.55,000/- towards disability, by adopting Rs.1,500/- per percentage of disability. Therefore, the findings of the Tribunal is perverse regarding fixing negligence and also fixing the quantum of compensation and the same are erroneous. Therefore, the present appeal is filed.



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C.M.A.No.939 of 20



8. There is no representation for the respondents.

9. Heard the learned counsel for the appellant and perused the materials available on record.

10. The accident is not in dispute. Due to the accident, the appellant/claimant sustained injuries which is also not in dispute. A reading of Ex.P.1/F.I.R. shows that the driver of the 1st respondent/Transport Corporation, has made the complaint before the police against the appellant/claimant based on which, the case was registered, which is not in dispute. Admittedly, the F.I.R. is not an Encyclopedia and the Tribunal cannot rely upon the evidence of the Criminal Court viz. Investigation report, charge sheet etc. The Tribunal has to independently come to a conclusion with the materials placed before it.

11. The contention of the learned counsel for the appellant/claimant is that due to the accident, the appellant/claimant sustained injuries and when he was taken to hospital for treatment, the driver of the 1st



respondent/Transport Corporation, rushed to the police and gave the complaint against the appellant/claimant and that the F.I.R. is not an Encyclopedia and therefore, the liability cannot be fixed solely on the basis of the F.I.R. itself. However, after taking treatment, the appellant/claimant has not given any complaint against the driver of 1st respondent/Transport Corporation, either before the police or to the Superior Officers. Further, the appellant/claimant has not examined any other eyewitnesses viz., either his passengers or his conductor or any other passengers from the opposite bus/1st respondent/Transport Corporation bus. The appellant/claimant himself only was examined as P.W.1. and no other witness was examined to prove that the accident had occurred only due to the rash and negligent driving of the driver of the 1st respondent/Transport Corporation.

12. Therefore, based the available materials, the Tribunal on finding that both the vehicles are heavy vehicles and passengers bus and the drivers of both the buses have driven the buses in the opposite directions and if any one of them was so cautious, they could have avoided the accident and hence, the Tribunal came to the conclusion that both the drivers have contributed their negligence for the accident. The learned counsel for the



appellant/claimant has not pointed out any perversity in the appreciation of available materials and the findings of the Tribunal is against the materials which was placed before it.

13. This Court as an appellate Court and final Court of fact finding, it can re-appreciate the entire evidence and can give independent findings. This Court, while scrutinizing all the materials, finds that no contra evidence was let in by the appellant/claimant to the F.I.R. Except the appellant/claimant, none of the passengers or eyewitness were examined to prove that the accident had occurred only due to the rash and negligent driving of the driver of the 1st respondent/Transport Corporation. In the absence of the same, this Court does not find any perversity in the appreciation of evidence by the Tribunal.

14. Admittedly both the vehicles are heavy vehicles i.e., Bus and at the time of accident, both the buses have proceeded in the opposite directions and if any one of them were conscious, they could have avoided the accident. Under these circumstances, this Court finds that both the drivers have contributed their negligence. The Tribunal has rightly fixed the



contributory negligence at 50%-50% on both the drivers since they both have equally contributed their negligence for the accident. This Court does not find any perversity in the findings of the Tribunal in respect of fixing the liability. Therefore, this Court also confirms the stand taken by the Tribunal and there is no reason to interfere with the findings of the Tribunal.

15. As far as quantum of compensation is concerned, Ex.P.10 is the Disability Certificate. The doctor was examined as P.W.2. Though the doctor has fixed the disability at 42%, the doctor one who treated the appellant/claimant was not examined. The doctor/P.W.2 has examined the appellant/claimant only for the purpose of fixing the disability. Therefore, the Tribunal has fixed the disability at 37% and granted Rs.1,500/- for each percentage. Since, the accident took place in the year 2006, at the relevant point of time, Rs.1,500/- only was adopted for per percentage of disability. Therefore, the Tribunal has rightly fixed Rs.1,500/- per percentage and granted Rs.55,000/- (37% x Rs.1,500/-) towards compensation for disability.

16. With regard to the amount awarded under other heads, this Court does not find any perversity in fixing of quantum of compensation and



this Court feels that the compensation fixed by the Tribunal is “just and reasonable” compensation. This Court does not find any perversity in the appreciation of evidence and the findings given by the Tribunal. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

17. Accordingly, this Civil Miscellaneous Appeal is dismissed.

There shall be no order as to costs in the present appeal.

22.08.2023

ksa-2

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

1.The Motor Accident Claims Tribunal/Additional District Court (FTC),
Tirupattur, Vellore District,

2.The Section Officer,
VR Section,
High Court,
Madras.



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C.M.A.No.939 of 2018



P.VELMURUGAN, J

ksa-2

C.M.A. No.939 of 2018

22.08.2023