



C.M.A.No.4 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.4 of 2022

M.Ashok Kumar

... Appellant

Vs

The Managing Director,
TamilNadu State Transport Corporation Ltd.,
Kumbakonam, Trichy Region.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 10.02.2020 made in M.C.O.P.No.8615 of 2015 on the file of the Principal Special Judge, Special Court under E.C & NDPS Act, Chennai.

For Appellant	: Mrs.A.Subadra for Ms.M.Malar
For Respondent	: M/s.M.Murali Vinoth

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order of dismissal dated 10.02.2020 passed in M.C.O.P.No.8615 of 2015 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai.



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2. The appellant filed M.C.O.P. No.8615 of 2015 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai claiming a sum of Rs.40,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.09.2015.

3. According to the appellant, on the date of accident, i.e. 30.09.2015 while he was riding the motorcycle bearing Registration No.TN-46-M-4410, from Perambalur to Bommanapaddy, the driver of the bus bearing Registration No. TN-45-N-1951 belonging to the respondent, drove the same in a rash and negligent manner, hit against the motorcycle and caused the accident. In the above said accident, the appellant / Ashok Kumar sustained grievous injuries and hence filed claim petition claiming compensation against the respondent.

4. The respondent filed counter statement denying all the averments made by the appellant in the claim petition. According to the respondent, accident occurred only due to the negligent act of the motorcyclist who drove the vehicle in a rash and negligent manner without wearing helmet at



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the time of accident and also did not possess a valid two wheeler license and invited the accident. Hence, prayed for dismissal of the appeal.

5. Before the Tribunal, the appellant examined himself as PW.1 and examined two other witnesses as PW.2 and PW.3 and marked Ex.P1 to Ex.P23. The respondent, did not examine any witness or marked any document.

6. The Tribunal after considering the evidence and documents filed on the side of the appellant, dismissed the claim petition against the appellant.

7. Aggrieved by the said order, the appellant has preferred the present appeal.

8. The learned counsel for the appellant submitted that though the appellant and other eye witness PW.2 were examined on his side to prove that the accident took place on account of the rash and negligent driving of the driver of the bus belonging to the respondent, the Tribunal had erroneously considered the FIR and dismissed the claim petition. The



learned counsel submitted that the driver of the bus was not examined before the Tribunal. In such circumstances, the tribunal ought not to have disbelieved the evidence of PW.1 and PW.2 on the basis of the FIR. The learned counsel for the appellant submitted that it was proved before the Tribunal that the appellant suffered the following injuries:-

(i) Grade III A Open depressed fracture frontal bone and sinus with intra cerebral haemorrhage.

(ii) Grade III B Open comminuted fracture right foot.

(iii) Right hand and right knee laceration.

PW.3, Doctor, assessed the disability at 40%. The appellant had also undergone two surgeries on 30.09.2015 and 27.11.2015. Hence, the appellant is entitled to compensation by adopting percentage method, as per the evidence of PW.3 and Ex.P.20, disability certificate.

9. The learned counsel for the respondent / Transport Corporation *per contra*, submitted that the appellant was guilty of rash and negligent riding and the Tribunal was right in dismissing the claim petition of the appellant. The learned counsel further submitted that the appellant was not examined by the Medical Board and hence, PW.3's assessment cannot be the basis to



determine compensation. The learned counsel also submitted that the award of the tribunal is well considered and hence, no interference is called for.

10. Heard the learned counsel for the appellant/claimant and the learned counsel appearing for the respondent/Transport Corporation.

11. This Court on perusal of the records and the finding of the Tribunal finds that the Tribunal found that the claim petition is not maintainable on the basis of the FIR lodged by the driver of the bus belonging to the respondent corporation. The respondent corporation had not examined the driver or any other witnesses to rebut the evidence let in on the side of the appellant. The appellant had examined himself as P.W.1 and another eyewitness as P.W.2. Both P.W.1 and P.W.2 have deposed that the accident took place due to the rash and negligent driving of the driver of the Bus. The evidence adduced before the Tribunal through P.W.1 and P.W.2 are substantive in nature. The FIR is not substantive evidence. The Tribunal ought not to have rejected the claim petition on the basis of the FIR alone. Therefore, this Court is of the view that the finding of the Tribunal dismissing the claim petition on the ground that the accident took



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place on account of rash and negligent driving of the appellant is erroneous and set aside.

12. Further, on the point of quantum of compensation, on perusal of the records, this Court finds that admittedly, the appellant had suffered the above referred injuries. Though the appellant was not examined by Medical Board, in the facts of the case, considering that the appellant had undergone two surgeries; that the respondent-Transport Corporation has not let in any evidence to disbelieve the evidence of PW.3, this Court is of the view that the evidence of PW.3 assessing the disability at 40% can be accepted. However, the appellant has not established any functional disability, hence, it would be just and reasonable to award compensation by percentage method. Since the accident is of the year 2015, a sum of Rs.4,000/- per percentage can be awarded. Hence, Rs.1,60,000/- (Rs.4,000/-x40) is awarded towards permanent disability.

13. Considering the nature of injuries, the appellant would have suffered loss of income for three months. Hence, the notional income can be fixed at Rs.12,000/- per month, taking into consideration, the appellant's



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avocation and the year of accident. Hence, loss of income has to be Rs.36,000/- (12,000x3). It is also seen that the appellant had produced Ex.P14 / medical bills to show that he had incurred Rs.2,21,545/- towards medical expenses and the same is confirmed. The appellant is also entitled to compensation under other heads viz., Pain and suffering and mental agony, Extra nourishment, Transport expenses, Attender charges and loss of amenities at Rs.25,000/-, Rs.25,000/-, Rs.10,000/-, Rs.10,000/- and Rs.25,000/- respectively.

14. Hence, the total compensation payable in this case is Rs.5,12,545/- and the break-up is as follows -

<i>Head</i>	<i>Amount (Rs.)</i>
Permanent disability	1,60,000/-
Loss of income	36,000/-
Pain and suffering and mental agony	25,000/-
Extra nourishment	25,000/-
Transport expenses	10,000/-
Attender charges	10,000/-
Medical expenses	2,21,545/-
Loss of amenities	25,000/-
Total	5,12,545/-

15. In the result, this Civil Miscellaneous Appeal is allowed and the



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order passed in MCOP.No.8615 of 2015 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai is set aside. The respondent is directed to deposit the award amount, now determined by this Court along with interest at 7.5% and costs, to the credit of MCOP.No.8615 of 2015 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs. The appellant is directed to pay the necessary Court Fee, if any, on the award amount. No costs.

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Index: Yes/No
Neutral Citation: Yes/No
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1.The Principal Special Judge, Special Court under E.C & NDPS Act,
Chennai.

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



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SUNDER MOHAN, J.

AT

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