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CM.A.No.190 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2023

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI,J.**

C.M.A.No.190 of 2021

S.Manoharan

...Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Chennai-malai Road,
Erode.

...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, appeal against the award and decree dated 27.07.2020 made in M.C.O.P.No.825 of 2018 on the file of the Motor Accidents Claims Tribunal Subordinate Judge at Kangayam.

For Appellant : Mr.Ma.P.Thangavel

For Respondent : Mr.M.Murali Vinodh



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JUDGMENT

This Civil Miscellaneous Petition has been preferred against the order of the Tribunal in M.C.O.P.No.825 of 2018 dated 27.07.2020.

2. The claimant/injured has filed the claim petition in M.C.O.P.No.825 of 2018, claiming compensation for the injury sustained by him in road accident that took place on 13.08.2017. According to the claimant/injured, he was working as building mason and he was earning not less than Rs.15,000/- per month. While so, on 13.08.2017 at about 9.15 a.m, the claimant/injured was proceeding in his motor cycle bearing Registration No.TN 42 U 0907 from his residence to Padiyur in the north south direction. At the time, the respondent bus bearing Registration No.TN 33 N 26 33 was also proceeding from North to South in a rash and negligent manner. Though the claimant/injured was travelling on the right side, the bus dashed on the vehicle of the claimant/injured due to which the claimant/injured sustained grievous injuries. The claimant/injured had taken treatment for the injuries sustained by him. Due to the impact of the accident, the claimant/injured is unable to do his routine work as before and has also lost his earning capacity.



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Since the respondent's vehicle is responsible for the accident, the respondent is liable to pay compensation for the injuries sustained by the claimant/injured. The claimant/injured has claimed a sum of Rs.8,00,000/- for the injuries sustained by the him with interest and cost.

3. On the other hand, the respondent in their counter statement has stated that on the date of the accident the respondent bus was driven by the driver in a normal speed following traffic rules. The claimant/injured drove the motor cycle in a rash and negligent manner and while attempting to overtake the bus on the left side, dashed on the left exit of the bus and caused the accident. In order to claim compensation the claimant/injured has given a false complaint on which the police had registered a case. It is further submitted that the claim made by the claimant/injured is excessive and he did not possess a valid driving license. Hence, the claim made by the claimant/injured is unsustainable and the petition is liable to be dismissed.

4.The Tribunal based on the pleadings on either side arrived at the points for consideration as follows:-

1. Whether the accident occurred due to the rashness and negligence of



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the driver of the offending vehicle? and

2. *Whether the petitioner is entitled to any compensation as prayed? If yes, what is the quantum and from whom?*

5. On the side of the claimant/injured he had examined himself as P.W.1 and Exs.P.1 to P.9 were marked and on the side of the respondent the driver of the bus was examined as R.W.1 and no documentary evidence was submitted. The Tribunal, upon consideration of the averments made in the petition and in the counter statement and apprising the evidence adduced from both sides and the arguments advanced by the respective counsels, fixed the disability and awarded compensation as follows:-

"In Result

(i) The petition is partly allowed with proportionate cost.

(ii) Out of the total compensation amount of Rs.2,63,300, the respondent is liable only to 50% of the amount being Rs. 1,31,650/-, with cost and interest at 7.5% interest from the date of petition till the date of deposit in the MACT account of this Tribunal in State Bank of India, Kangayam Branch Account No.37257782854 (IFSC Code SBIN0002221). The deposit is to be made within 30 days from today.

(iii) The petitioner is entitled to Rs.1,31,650/- with accrued interest and cost, out of which 50% of the amount is to be



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deposited in a Nationalised/Scheduled Bank for a period of 3 years and the balance 50% of the amount the petitioner is entitled to withdraw the same through RTGS/NEFT to his account maintained in State Bank of India, Padiyur Branch with the account number 35907013738 (IFSC Code SBIN0007591)

(iv) The petitioner shall pay the balance court fee within 15 days from today. Unless and until the fee is paid, the petition is not entitled to withdraw the amount so deposited by the respondents.

[Court fee: payable Rs.689/-; paid Rs. 250/-, Balance Rx 439/-]

(v) The respondent is to bear cost of Rs.6,367/- which includes Advocate fee of Rs.5,633."

6. Aggrieved by the fixation of 50% of contributory negligence and the quantum arrived by the tribunal, the appellant/petitioner preferred the present appeal.

7. The learned Counsel appearing for the claimant/injured would contend that the claim under Section 166 of Motor Vehicles Act ought to have been decided based on the preponderance of probability of the accident, whether it has occurred due to rash and negligent driving of the transport Corporation bus. The registration of the FIR would establish that the



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respondent vehicle is in fault. He would further contend that no independent witness was examined on the side of the respondent to prove the manner of the accident. He had also placed reliance on the judgment of the Apex Court reported in **2013 4 CTC 252** in which it was held that no negligence can be fixed based on the observation mahazar or rough sketch prepared by the Investigating agency. Even though there was no eyewitness to the occurrence, the learned counsel appearing for the claimant/injured would contend that fixing 50% contributory negligence on the part of the claimant/injured is unwarranted and it is liable to be set aside. His further contention is that the claimant/injured has sustained fracture on the left radius, fracture on tibia condoyler right, fracture medial malleili right and the medical board the tribunal without considering the nature of the injury erroneously assessed permanent disability at 9% which is very low and the Tribunal fixing Rs.4000/- each for the disability for the accident happened on 2017 is very meagre. Hence, he claims for enhancement of compensation.

8.On the other hand, the learned counsel appearing for the respondent would contend that the evidence of the driver examined as R.W.1 is without any cloud of doubt that the accident occurred, due to the negligent



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act of the claimant/injured has also contributed to the accident and quantum fixed by the Tribunal is reasonable which calls for no interference.

9. Heard both sides and records perused.

10. The claimant has approached this Court on two grounds:

Firstly, with regard to fixing of 50% contributory negligence on the part of the claimant.

Secondly, with regard to enhancement of compensation, the learned counsel appearing for the claimant would submit that the accident was caused due to the sole negligence of the driver of the bus and therefore, the tribunal erroneously fixed 50% for contributory negligence which requires consideration.

11. The petitioner examined as P.W.1 in his evidence has deposed that while he was proceeding on the extreme left of the road, the respondent bus driver drove the vehicle in a rash and negligent manner and at the time of overtaking the vehicle of the petitioner dashed against his vehicle and caused the accident. Whereas, the driver of the bus examined as R.W.1 had deposed that the petitioner while trying to overtake the bus on the left side, wrongly



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dashed against the left hand side rare exit door of the bus and caused the accident. Therefore, the driver claims that he was no way responsible for the accident. The Tribunal considering the rough sketch marked as Ex.P.4 and the report of the Motor Vehicle Inspector marked as Ex.P.2 came to the conclusion that the claimant has contributed to the accident and fixed 50% for contributory negligence. Placing reliance on the judgment of the Apex Court reported in **2013 (4) CTC 252** in which it was held that no negligence can be fixed based on the observation mahazar or Rough sketch prepared by the Investigation Agency. In this case, except the evidence of R.W.1 no independent witnesses were examined to prove the manner of the accident. The driver of the offending bus definitely will be an interested person and therefore, reliance cannot be placed on his evidence . There is no basis for the Tribunal which recorded the finding to the extent of contributory negligent on the part of the injured except the rough sketch by which no negligence can be fixed as per the observation made by the Hon'ble Apex Court reported in **2013 (4) CTC 252**.

12.On perusal of Ex.P.2 Motor Vehicle Inspector's report of the bus,it is seen that the damages sustained by the vehicle is a dent on the left



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hand side rare exist door. If really the petitioner attempted to overtake the bus as per the evidence of R.W.1, the damage would not have been sustained on the rare exit door on the left side of the bus. Therefore, the Tribunal has erred in recording finding on contributory negligence and put the blame on the injured to the extent of 50%. Therefore, the finding of the Tribunal in respect of contributory negligence is set aside.

13. The next contention of the claimant is that the Tribunal erred in fixing Rs.4000/- per percentage for the disability suffered by the claimant.

14. On perusal of records it is seen that the disability fixed by the Tribunal is at Rs.4000 x 9 = Rs.36,000/- which can be enhanced to Rs.5000/- per percentage (Rs.5000/- x 9 = Rs.45,000/-) as per the judgement reported in **Mangla Ram vs Oriental Insurance Co. Ltd and others cited in 2018 (1) TN MAC 681 (SC) and Jiju kuruvila and others vs kunjujamma mohan and others cited in 2013 (4) TN MAC 44 (SC)** and the compensation awarded under other heads remains unaltered. Therefore, the total compensation of Rs.2,63,300/- awarded by the Tribunal is enhanced to Rs.2,72,300/- along with interest at the rate of 7.5% per annum.



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15. In the result, this Civil Miscellaneous Appeal is allowed and a sum of Rs.2,63,300/- awarded by the Tribunal is enhanced to Rs.2,72,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

16. The respondent/Transport Corporation is directed to deposit the above said sum, as modified by this Court, along with interest, within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit, the claimant is permitted to withdraw the same along with interest. No costs.

09.10.2023

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To:-

The Subordinate Judge,

Motor Accident Claims Tribunal, Kangayam.



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