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C.M.A.No.845 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.845 of 2014

And

M.P.No.1 of 2014

Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division I
37, Mettupalayam Road,
Coimbatore.

... Appellant

Vs.

1.Raju
2.Sivaraj
[R2 given up]

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 02.11.2010 passed in M.C.O.P.No.884 of 2008 by the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Tirupur.

For Appellant : Mr.S.S.Swaminathan
For Respondents : R1 – No Appearance
R2 – Given up

J U D G M E N T

The second respondent Transport Corporation before the Motor



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Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 02.11.2010 passed by the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Tirupur, in M.C.O.P.No.884 of 2008.

2.The brief facts of the case is that on 18.04.2007, at about 4.30p.m., the first respondent was riding the two wheeler bearing Registration No.TN 37 AD 1040 on Palladam to Trichy Road near Marapalam. At that time, the bus bearing Registration No.TN 38 N 1289 came in a rash and negligent manner and dashed against the first respondent, due to which, the first respondent sustained injuries.

3.Thereafter, the injured claimant/ first respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.5 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.1,88,240/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and proportionate costs and directed the appellant Transport Corporation to deposit the compensation. Aggrieved by the same, the appellant Transport Corporation has filed this appeal.



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4.The learned counsel appearing for the appellant submitted that the appellant has filed this appeal questioning the negligence as well as the quantum of compensation awarded by the Tribunal. The learned counsel further submitted that the driver of the appellant Transport Corporation made complaint as against the first respondent and the F.I.R. is marked as Ex.P.1. Further, the driver of the appellant Transport Corporation was examined as R.W.1 and he deposed that due to the rash and negligent driving of the driver of the two wheeler, the accident happened and further submitted that the claimant under the influence of alcohol dashed against the bus, however, the Tribunal fastened the liability as against the appellant is not sustainable one. Further, the Doctor who did not give treatment to the claimant assessed the disability and the Tribunal erroneously concluded that the disability suffered by the claimant as functional disability and awarded compensation by adopting multiplier method, which is not sustainable one.

5.Heard the learned counsel appearing for the appellant Transport Corporation. Though notice was served on the first respondent claimant, when the matter was taken up for



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consideration, there is no representation for the first respondent.

Considering the pendency of the appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

6.The claimant in the claim petition claim that on 18.04.2007, at about 4.30p.m., the first respondent was riding the two wheeler on Palladam to Trichy Road near Marapalam. At that time, the bus belonging to the Transport Corporation came in a rash and negligent manner and dashed against the first respondent, due to which, the first respondent sustained injuries.

7.The appellant claim that the claimant, under the influence of alcohol, dashed against the bus belonging to the Transport Corporation and fell down.

8.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.1,65,240/- for loss of income, Rs.1,000/- for transport expenses, Rs.2,000/- for extra nourishment, Rs.5,000/- for discomfort, Rs.15,000/- for pain and sufferings and arrived at a total compensation of Rs.1,88,240/- with interest at the rate of 7.5% p.a.



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from the date of petition till the date of deposit.

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9.This Court perused the F.I.R., which was registered at the instance of the driver of the appellant Transport Corporation and it did not reveal consumption of alcohol by the claimant. Hence, this Court is not inclined to interfere with the liability aspect.

10.Insofar as the quantum of compensation is concerned, the Tribunal ought to have followed the decision of the Hon'ble Apex Court reported in *(2011) 1 SCC 343 [Raj Kumar Vs. Ajay Kumar and Ors.]*, however, without following the guidelines issued in the said decision, the Tribunal mechanically passed the award by applying multiplier method, which is not sustainable one.

11.The Doctor has assessed the disability of the injured claimant as 35.8% partial permanent disability. Since the assessment of disability varies from Doctor to Doctor, this Court fix the disability of the claimant as 30% and at the relevant point of time Rs.3,000/- per percentage of disability was awarded. Hence, amount awarded for loss of income works out to Rs.90,000/- [30% X Rs.3,000/- = Rs.90,000/-]. The amount awarded under the head pain



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and sufferings, in the opinion of this Court is low and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded for pain and sufferings is enhanced to Rs.25,000/- from Rs.15,000/- The amount awarded under the other heads are just and reasonable and the same are confirmed.

12. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of Income	Rs.1,65,240/-	Rs. 90,000/-
2.	Extra nourishment	Rs. 2,000/-	Rs. 2,000/-
3.	Transport expenses	Rs. 1,000/-	Rs. 1,000/-
4.	Discomfort	Rs. 5,000/-	Rs. 5,000/-
5.	Pain and sufferings	Rs. 15,000/-	Rs. 25,000/-
	Total	Rs.1,88,240/-	Rs.1,23,000/-

13. The first respondent claimant is entitled to total compensation of Rs.1,23,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

14. The civil miscellaneous appeal is partly allowed. The judgment and decree dated 02.11.2010 passed by the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Tirupur, in



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M.C.O.P.No.884 of 2008, is modified to the above extent.

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15.The appellant Transport Corporation is directed to deposit the modified award amount before the Tribunal less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/ claimant is permitted to withdraw the modified award amount with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

16.The civil miscellaneous appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

20.11.2023

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The learned Principal Sub Judge,
Motor Accidents Claims Tribunal,
Tirupur.

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M.DHANDAPANI,J.
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