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C.M.A.No.649 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.649 of 2023
and CMP.No.5462 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation,
37, Mettupalayam Road,
Coimbatore.

... Appellant

VS.

1.Sakthivel
2.V.Subramanian

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 29.03.2019 made in M.C.O.P.No.820 of 2015, on the file of the Motor Accident Claims Tribunal (IV Additional District Judge) Erode District, Bhavani.

For Appellant : Mr.M.Murali Vinodh



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JUDGMENT

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The Civil Miscellaneous Appeal is filed to set aside the Decree and Judgment dated 29.03.2019 made in M.C.O.P.No.820 of 2015, on the file of the Motor Accident Claims Tribunal (IV Additional District Judge) Erode District, Bhavani.

2. The said appeal is filed by the Insurance company challenging the negligence as well as the quantum of compensation. The parties will be referred to as per their ranking in the claim petition.

3. According to the claimant, the accident occurred on 24.09.2015 when the claimant was riding a TVS XL motorcycle along with a pillion rider. At that time, the Transport Corporation bus driven by its driver in a rash and negligent manner came in the opposite direction and hit against the claimant's motorcycle, due to which impact he sustained grievous injuries. The claimant therefore filed the claim petition for a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the motor accident.



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4. The first respondent remained Exparte before the Tribunal.

The second respondent filed a detailed counter denying all the averments in the claim petition apart from disputing the negligence and quantum.

5. Before the Claims Tribunal, the claimant examined himself as PW1 and Exs.P1 to P13 were marked. The second respondent on the other hand, examined three witnesses as R.W.1 to R.W.3 and marked as Ex.R1 to R3. Ex.C1 and C2 were marked as Court documents.

6. The Claims Tribunal, on the basis of both oral and documentary evidence on record held that the claimant contributed to the accident and apportioned the negligence in the ratio 90% for the bus and 10% towards the claimant's negligence. The claims Tribunal awarded a sum of Rs.1,92,962/- along with 7.5% p.a. as compensation to the claimant being the 90% share of the appellant.

7. Aggrieved by the judgment and decree of the Tribunal, the second respondent Transport Corporation has filed the above appeal challenging the award of the Tribunal on the ground of negligence and quantum.



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8. At the time of argument, the finding on issue of negligence alone was contested. According to the learned counsel for the appellant, the Tribunal erred in deducting only 10% towards the contributory negligence of the claimant overlooking that the claimant was in a drunken mood and as such his own negligence resulted in the accident. According to the counsel for the appellant, the contributory negligence of the claimant ought to have been fixed at 50% as he was in a drunken mood at the time of the accident.

9. Though notice was served to the claimant, he has not appeared either in person or through his counsel.

10. I have heard the learned counsel for the appellant and I have perused the materials available on record .

11. The contention of the appellant's counsel that the accident occurred only due to the negligence of the claimant as he was in drunken mood is not supported by any evidence. Even in the counter filed before the claims Tribunal it is stated that the accident occurred when the claimant turned his head to the back side and talked to the pillion rider not



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noticing the on coming bus. The drunken state of the claimant was neither pleaded nor proved. In the absence of any pleading and proof, the finding of the Tribunal on contributory negligence of the claimant does not merit interference. I therefore find no compelling reasons to interfere with the finding of the Tribunal on negligence and hence it is confirmed.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed and Judgment and decree passed by the Motor Accident Claims Tribunal, (IV Additional District Judge) Erode District in M.C.O.P.No.820 of 2015 dated 29.03.2019 is hereby confirmed. Consequently, connected miscellaneous petition is closed. No costs.

27.04.2023

Index : Yes/No

Neutral Citation : Yes/No

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N.MALA,J.

kkd

To:

The Motor Accidents Claims Tribunal,
(IV Additional District Judge) Erode District,
Bhavani.

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27.04.2023