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C.M.A.No.1121 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1121 of 2023

and

CMP.No.10904 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Railway Station Road,
Kumbakonam Taluk,
Thanjavur District.

... Appellant

vs.

Marimuthu ... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 09.03.2022 made in M.C.O.P.No.4942 of 2017 on the file of the IV Court of Small Causes, Chennai, and be pleased to dismiss the above claim as against the appellant.

For Appellant : Mr.M.Murali Vinodh

For Respondent : Mr.R.Mohanbabu

* * * * *

J U D G M E N T



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This Civil Miscellaneous Appeal is filed to set aside the Judgment and Decree dated 09.03.2022 made in M.C.O.P.No.4942 of 2017 on the file of the IV Court of Small Causes, Chennai, and be pleased to dismiss the above claim as against the appellant.

2.The Transport Corporation has filed the above appeal challenging the finding of the Tribunal on negligence, quantum and liability.

3.The summary of the facts leading to the appeal are as follows:

On 13.05.2017, while the claimant was driving his two wheeler at Udayarpalayam to Senthurai Main Road, near Udayarpalayam Saamiyar Koil bend, from East to West direction, the Transport Corporation bus which was proceeding in the opposite direction and which was driven by it's driver in a rash and negligent manner hit the claimant's two wheeler. The claimant sustained grievous bony injuries and his vehicle was also damaged due to the impact of the collision. The claimant therefore filed the claim petition claiming a sum of Rs.10,00,000/- for the injuries sustained by him in the accident.



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4.The appellant/Transport corporation contested the claim petition, by filing a detailed counter disputing the liability, negligence and quantum.

5.Before the Claims Tribunal, the claimant examined himself as PW1 and marked Ex.P1 to Ex.P12 in support of the claim petition. The appellant/Corporation neither marked any document nor let in oral evidence. The Disability certificate issued by the Medical Board was marked as Ex.C1.

6.The Claims Tribunal on an assessment of entire evidence on record returned a finding of negligence against the driver of both the vehicles and apportioned the negligence at 20% for the claimant and 80% for the driver of the Transport Corporation. The Tribunal assessed the compensation at Rs.11,73,934/- and after deducting Rs.2,34,786/- towards 20% negligence of the claimant awarded Rs.9,36,500/- along with 7.5% interest. Aggrieved by the Judgment and Decree of the Tribunal the Transport Corporation has filed the above appeal.



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WEB COPY 7.The learned counsel appearing for the appellant/Transport Corporation submitted that the finding of the Tribunal on negligence and the assessment of compensation was erroneous. According to the learned counsel for the appellant, the Tribunal having found that the claimant contributed to the accident erred in deducting only 20% towards the claimant's negligence. He further submitted that the Tribunal erred in adopting the multiplier method for assessing the loss towards disability.

8.The learned counsel for the respondent on the other hand submitted that though the respondent had not filed an appeal before this Court, this Hon'ble Court can invoke the provisions under Order 41 Rule 33 for setting aside the finding of the Tribunal on contributory negligence. According to the learned counsel it is well settled that mere non-possession of driving license, in the absence of proof of negligence would not lead to an inference of contributory negligence. The learned counsel for the respondent further submitted that the compensation assessed at Rs.11,73,934/- was just and reasonable on the facts of the case.



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9.I have heard both the learned counsel and have perused the materials on record.

10.The Tribunal on the basis of the oral and documentary evidence filed on the side of the claimant held that the negligence of the bus driver resulted in the accident. The only reason assigned by the Tribunal for it's finding that the claimant contributed to the accident was non-possession of driving license by the claimant. In my view absence of driving license cannot ipso fact lead to an inference of negligence. The Tribunal having found on the basis of the evidence filed by the claimant that it was the bus driver's negligence which caused the accident, in my considered view erred in deducting 20% towards contributory negligence of the claimant only on the ground of non-possession of driving licence. Therefore, the finding of the Tribunal on contributory negligence cannot be sustained. In this regard useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of *Sudhir Kumar Rana Vs. Surindher Singh and Others*



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reported in (2008) 12 SCC 436. The relevant portion is extracted as under:

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9.If a person drives as vehicle without a licence, he commits an offence. The same, by itself in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the Courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence...

10.The matter might have been different if by reason of his rash and negligent driving, the accident had taken place.”

Hence, the finding of the Tribunal on negligence is set aside.

11.The Tribunal relying on Ex.C1, the disability certificate issued by the Medical Board assessed the disability at 35% for the fracture of the left upper limb and right lower limb. The Tribunal after considering the nature



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of the injuries sustained by the respondent and Ex.C1 disability certificate issued by the Medical Board found that there was functional disability and hence adopted the multiplier method.

12.I find that the finding of the Tribunal on functional disability and the adoption of multiplier method is justified. In the claim petition, the income of the respondent was claimed at Rs.30,000/- per month. Even though the respondent had produced Ex.P9 and Ex.P10 in support of his claim, the Tribunal rejected the same on the premise that they were not marked through proper person. The Tribunal therefore fixed the income notionally at Rs.9,000/- per month on the basis of the age of the deceased. In the absence of any legally permissible evidence to prove the income the Tribunal was justified in fixing the income at Rs.9,000/- per month. I find no infirmity in the assessment of the income by the Tribunal and therefore the same is confirmed.

13.In the light of the above discussion, the assessment of compensation by the Tribunal is confirmed with a modification that there



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shall be no deduction of 20% towards the contributory negligence of the claimant. The claimant shall be entitled for a sum of Rs.11,73,934/- along with interest at the rate of 7.5%, from the date of the claim petition till the date of realisation. It is submitted by the learned counsel for the claimant that the appellant/Transport Corporation has not deposited the award amount. In view of the same, the appellant/Transport Corporation is directed to deposit the award amount without deducting 20% towards contributory negligence, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant shall be entitled to withdraw the said amount by making proper application before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes/no

Internet : yes/no

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To
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- 1.The Motor Accident Claims Tribunal,
IV Court of Small Causes,
Chennai.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

N.MALA, J.

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