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C.M.A.No.1145 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1145 of 2020

and

CMP.No.7253 of 2020

Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division II, Rangapuram,
Vellore.

...Appellant

Vs.

1. Venkatesan
2. R.Shankar
3. Division Manager,
United India Insurance Co. Ltd.,
Vellore.
4. Arumugan

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the judgment and decree passed in M.C.O.P.No.88 of 2004 dated 31.10.2011 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Cheyyar.



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For Appellant : Mr.C.Suresh Kumar
For Respondents : Mr.K.G.Senthil Kumar, for R1
: No Appearance, for R2
: Ms.R.Vijaya Kamala, for R3
: R4 - Given up

JUDGMENT

Challenging the judgment and decree passed in M.C.O.P.No.88 of 2004 dated 31.10.2011 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Cheyyar, the appellant has come up with this appeal.

2. The case of the appellant is that, the 1st respondent filed a claim petition claiming compensation of Rs.5,00,000/- on the ground that, on 18.10.2003 at about 03.00 pm., when the 1st respondent was travelling as a passenger in the appellant transport corporation bus bearing Regn.No.TN-23-N-1062 driven by its driver/the 4th respondent herein, a mini tempo bearing Regn.No.TN-25-W-0861, owned by the 2nd respondent, insured with the 3rd respondent driven by its driver, came in a rash and negligent manner and dashed the right side of the appellant transport corporation bus, as a result of which, the 1st respondent sustained grievous fracture injury in his right hand and got admitted in the hospital. Thereby, the 1st respondent filed



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a claim petition claiming compensation for the injuries and loss of income sustained by him. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.93,000/- and fastened the entire liability as against the appellant transport corporation. Aggrieved with the said order, the appellant had preferred this appeal, questioning the liability of the insurer.

3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the driver of the 2nd respondent, for which, no compensation can be claimed at the hands of the appellant. Further, immediately after the accident, though the FIR was registered as against the 4th respondent/driver of the appellant transport corporation bus as well as the driver of the 2nd respondent vehicle, however, the final report was filed only as against the 4th respondent. However, it is pertinent to note that, in the final report, marked as Ex.P10, the law enforcing agency had only made a presumption that the 4th respondent may be at fault. While so, without properly appreciating the same, the tribunal held that the above said accident happened solely due to



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the rash and negligent driving of the 4th respondent and fastened the entire liability as against the appellant, which is not sustainable. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the 1st respondent submitted that, the above said accident happened due to the rash and negligent driving of the 4th respondent as well as the driver of the 2nd respondent vehicle and in order to prove the same, the 1st respondent/claimant examined himself as P.W.1 and narrated the manner in which the accident had happened and the injuries sustained by him. The tribunal, after carefully perusing all the relevant documents placed before it, had passed the present impugned award, fastening the entire liability as against the appellant transport corporation bus, which does not warrants any interference of this Court.

5. Learned counsel appearing for the 3rd respondent submitted that, initially, though the FIR was registered as against the 4th respondent/driver of the appellant transport corporation bus as well as the driver of the 2nd respondent vehicle, however, after investigation, the law enforcing agency



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filed the final report only as against the 4th respondent and thereby, it is evident that the above said accident happened solely due to the negligence on the part of the 4th respondent/driver of the appellant transport corporation bus. Therefore, the tribunal, upon careful perusal of the oral and documentary evidence, had fastened the entire liability as against the appellant, which cannot be said to be erroneous and the same does not requires interference of this Court.

6. Though notice was served and the name of the 2nd respondent was printed in the cause list, however, none appeared on his behalf. Considering the period of pendency of this appeal, this Court is inclined to dispose of the same based on the material documents placed on record.

7. The main contention of the learned counsel for the appellant relates to the fact that, initially, though the FIR was registered as against the 4th respondent/driver of the appellant transport corporation bus as well as the driver of the 2nd respondent vehicle, the final report was filed only as against the 4th respondent, however, in the final report, marked as Ex.P10, only a



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presumption was made that the 4th respondent may be at fault and it is not admitted that the 4th respondent drove the vehicle in a rash and negligent manner. While so, the tribunal fastened the entire liability as against the appellant, which is perverse.

8. It has been the consistent ratio laid down by the Courts that the FIR is not a substantive document and it has to be substantiated by acceptable positive legal evidence and whatever is spoken in the FIR need not be taken at its face value and when the 1st respondent/claimant examined himself as P.W.1 and clearly deposed the manner in which the accident had happened, neither the appellant nor the 3rd respondent have examined necessary witnesses and no contra evidence has been adduced by them in order to disprove the case of the claimant. In the absence of any contra evidence to the deposition of the P.W.1, the Tribunal, ought to have fixed 50%-50% negligence on the part of the 4th respondent/driver of the appellant vehicle and the driver of the 3rd respondent insured vehicle and fastened the liability as against the appellant as well as the 3rd respondent. Instead, the tribunal had fixed the entire negligence on the part of the driver of the appellant



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insured vehicle, which is perverse and the said findings of the Tribunal has to be necessarily interfered with.

9. Therefore, this Court holds that equally the driver of the 3rd respondent insured vehicle had contributed to the accident as well. Appreciating the materials available on record, this Court fixes the negligence at 50% : 50% on the part of the 4th respondent and the driver of the 3rd respondent insured vehicle. Therefore, the finding of the Tribunal on negligence is set aside and instead, this Court holds that the appellant transportation corporation bus is negligent to the extent of 50% while the vehicle of the 2nd respondent insured with the 3rd respondent had contributed negligence to the extent of 50%. Therefore, to the extent of 50%, the 3rd respondent as insurer of the vehicle belonging to the 2nd respondent is liable to pay the compensation to the 1st respondent/claimant.

10. With regard to quantum of compensation, it is the claim of the appellant that the compensation awarded by the Tribunal is highly excessive which requires reconsideration. In this regard, this Court perused the



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impugned award passed by the Tribunal and upon perusal of the impugned award, this Court is of the view that, by no stretch the compensation awarded in the appeal could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal in respect of the quantum of compensation.

11. The tribunal had awarded a compensation of **Rs.93,000/-** in favour of the 1st respondent, in which, deducting the amount towards the contributory negligence at 50% on the part of the driver of the 2nd respondent vehicle, the compensation payable by the appellant transport corporation is fixed at **Rs.46,500/-** and the appellant shall deposit the said amount to the credit of M.C.O.P.No.88 of 2004 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made by the appellant transport corporation, the Tribunal is directed to transfer the amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two (2) weeks



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thereafter. If any excess amount is deposited by the appellant/transport corporation, they are entitled to withdraw the same by way of filing necessary application.

12. Whereas, the compensation payable by the 3rd respondent/ insurance company for the contributory negligence of 50% fixed by this Court is fixed at **Rs.46,500/-** and the 3rd respondent shall deposit the said amount to the credit of M.C.O.P.No.88 of 2004 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made by the 3rd respondent/insurance company, the Tribunal is directed to transfer the amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two (2) weeks thereafter. It is made clear that the 3rd respondent is not liable to pay interest for the default period, if any.

13. With the above directions and modification to the impugned award



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passed by the tribunal in M.C.O.P.No.88 of 2004 dated 31.10.2011, this

Civil Miscellaneous Appeal stands **allowed in part**. No costs. Consequently,
the connected Miscellaneous petition is closed.

29.11.2023

skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To:

1. The Motor Accidents Claims Tribunal, Sub Judge,
Cheyyar.
2. The Section Officer,
V.R.Section, High Court, Madras.



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