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C.M.A.No.1057 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1057 of 2019

E.Rajeswari

... Appellant

Vs.

1.T.Dharmaraj

2.The Legal Manager (Claims),
Shriram General Insurance Company Ltd.,
No.66, 2nd Floor, City Centre Complex,
Thirumalai Pillai Road, T.Nagar,
Chennai.

3.The Managing Director,
TNSTC (Villuppuram) Ltd.,
No.3/137, Salamedu,
Vazhudhareddy,
Villuppuram Town,
Villuppuram Taluk,
Villuppuram District.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 02.03.2018 made in M.C.O.P.No.106 of 2015 on the file of the Motor Accidents Claims Tribunal – Cum – Special Sub Judge – II, Villuppuram, (originally numbered as M.C.O.P.No.774 of 2012 on the file of Principal Sub-Judge, Villuppuram).



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For Appellant : Mr.R.Shriram
for M/s.D.Ravichander

For Respondents : R1 – NRN
Mr.S.Dakshinamoorthy for R2
Mr.S.S.Santhosakumar for R3

J U D G M E N T

This appeal has been filed against the judgment and decree dated 02.03.2018 passed by the Motor Accidents Claims Tribunal – Cum – Special Sub Judge – II, Villupuram, in M.C.O.P.No.106 of 2015.

2.The learned counsel appearing for the appellant submitted that on 06.07.2012 at about 17.45 hours, the appellant was travelling in the TNSTC Bus bearing Registration No.TN 25 N 0096 from Koyembedu to Polur. When the bus was at Pukkathurai to Uthiramerur near ACT College at Nelvay X Road, a tanker lorry bearing Registration No.TDH 6169 owned by the first respondent and insured with the second respondent came from the opposite direction and dashed against the right side of the rear portion of the TNSTC Bus, due to which, the appellant sustained injuries.

3.The learned counsel appearing for the appellant further submitted that thereafter, the injured claimant/ appellant filed claim



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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.3,44,340/- and fixed 25% negligence on the part of the appellant and directed that the appellant is entitled to a sum of Rs.2,58,260/- (Rs.2,58,255/- rounded off) as compensation with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit excluding the period of default i.e., from 20.12.2016 to 05.10.2017 and costs.

4.The learned counsel appearing for the appellant further submitted that in order to prove the negligence, the appellant examined herself as P.W.1 and narrated the entire incident that happened on that day and marked exhibits Ex.P1 to Ex.P23. No witness was examined and no documents were marked on the side of the respondents, however, the Tribunal fastened 25% negligence on the part of the appellant, which is not sustainable. Further, the amount awarded by the Tribunal is meagre and hence, the appellant claimant has filed this appeal for enhancement in compensation and challenging the negligence aspect.



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5.The learned counsel appearing for the second respondent Insurance Company submitted that in the present case, there was minor scratches in the vehicle owned by the first respondent and the bus belonging to the third respondent and except the minor scratches, no damage was caused to the vehicles. Due to the negligence on the part of the appellant who projected her hands outside the bus, she sustained injuries. The Tribunal after considering all the factual aspects, rightly fixed 25% negligence on the part of the appellant and awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.

6.Heard the learned counsel appearing for the appellant claimant as well as the learned counsel appearing for the respondents 2 and 3 and perused the materials available on record.

7.Admittedly, on 06.07.2012 at about 17.45 hours, the appellant was travelling in the TNSTC Bus from Koyembedu to Polur. When the bus was at Pukkathurai to Uthiramerur near ACT College at Nelvay X Road, the tanker lorry owned by the first respondent and insured with the second respondent came from the opposite direction and dashed



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against the right side of the rear portion of the TNSTC Bus, due to which, the appellant sustained injuries.

8.Perusal of records disclose that there was only minor scratches in the vehicle owned by the first respondent and the bus belonging to the third respondent and except the minor scratches, no damage was caused to the vehicles. Due to the negligence on the part of the appellant who projected her hands outside the bus, she sustained injuries. The Tribunal after considering all the factual aspects, rightly fixed 25% negligence on the part of the appellant and awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.

9.The civil miscellaneous appeal is dismissed. The judgment and decree of the Motor Accidents Claims Tribunal – Cum – Special Sub Judge – II, Villupuram, in M.C.O.P.No.106 of 2015 dated 02.03.2018, is confirmed.

10.The second respondent Insurance Company is directed to deposit the award amount before the Tribunal, as directed by the Tribunal, within a period of four weeks from the date of receipt of a



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copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellant/ claimant is permitted to withdraw the award amount, along with accrued interest and costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

11.The civil miscellaneous appeal is dismissed. No costs.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal – Cum –
Special Sub Judge – II, Villupuram.

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