

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.185 of 2020

The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Region (Division -2)
Bye Pass Road,
Madurai.

..... Appellant/ 2nd Respondent

-VS-

1. Veeralakshmi

.... 1st Respondent /Petitioner

2. Mookiah

(the 2nd respondent is the driver of appellant
and that given up)

3. Gurusamy

4. Sree Ram General Insurance Company Limited,

Represented by its Divisional Manager,

Office at

Door No.25 B2/1S, 2nd Floor,

North Block, S.R.C.Complex,

25B, S.N. High Road,

Tirunelveli,

Tirunelveli District.

..... Respondents 2 to 4/ Respondents 1, 3 and 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.74 of 2012, dated 16.08.2019, on the file of the Motor Accidents Claims Tribunal/Sub Court, Sankarankovil.

For Appellant : Mr.P.Prabhakaran
For Respondents : No Appearance – For R1
: R2- Given up
: Mr.R.J.Karthick - For R3
: Mr.V.Sakthivel - For R4

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Transport Corporation against the award passed by the Tribunal in M.C.O.P.No.74 of 2012 challenging the negligence and quantum.

2. According to the injured claimant, she is a Milk Vendor and while she was travelling in a TATA ACE goods vehicle along with others, the bus belonging to the second respondent/ Transport Corporation has hit and dashed against the said TATA ACE vehicle from behind, which resulted in throwing away of the lady from the said vehicle.

3. According to the claimant, she has sustained three grievous injuries and four simple injuries and she had claimed for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) towards compensation.

4. The Transport Corporation has filed a counter contending that the driver of the bus was not driving the vehicle in a rash and negligent manner. On the other hand, 35 peoples were travelling in a TATA ACE vehicle, which is clearly a violation of the statutory Rules. He further contended that the TATA ACE vehicle was driven in a rash and negligent manner and that has resulted head on collision with the bus and the front portion of the bus was damaged. He further contended that they are not liable to pay the compensation to the claimant on the ground that the same has to be paid by the Insurance Company of the TATA ACE Vehicle.

5. The Tribunal, after considering the oral and documentary evidence arrived at a finding that the driver of the Transport Corporation was responsible for the accident, especially, based upon the evidence given by him as R.W.1. After arriving at such a finding, the Tribunal proceeded to fix the permanent disability at 60% and fixed a sum of Rs.75,000/- (Rupees Seventy

Five Thousand only) towards the said permanent disability. Thereafter, under the head of loss of future earning capacity they have calculated in a multiplier method and arrived at a compensation of Rs.2,59,200/- (Rupees Two Lakhs Fifty Nine Thousand and Two Hundred only). Since there were no records for medical expenses, no amount was allowed under the said head. A sum Rs. 10,000/- (Rupees Ten Thousand only) was awarded under the head of extra nourishment and another sum of Rs.10,000/- (Rupees Ten Thousand only) was awarded for attender charges. The said award is under challenge in the present appeal by the Transport Corporation.

6. According to the learned counsel appearing for the Transport Corporation, the TATA ACE vehicle is the goods vehicle and it has been used for transporting passengers. It is clearly against the statutory Rules and therefore, they are not liable to pay any compensation. The main fact that the said vehicle carried 35 passengers will clearly show that there was a negligence on the part of the TATA ACE vehicle owner. He further contended that the Transport Corporation bus was driven in accordance with the Traffic Rules and Regulations. However, there was rash and negligent driving on the part of the TATA ACE vehicle driver which resulted in the damage of the

front portion of the Transport Corporation bus. He further contended that though the Corporation had examined their own driver as RW.1, the claimant has not chosen to examine the driver of the TATA ACE vehicle. Therefore, the claimant has not established that the accident has happened only due to the rash and negligent driving on the part of the appellant/Corporation.

7. The learned counsel appearing for the appellant had further contended that the Tribunal has not awarded the compensation as per the settled procedure of law. He pointed out, after arriving at a finding that the injured has sustained 60% of permanent disability ought to have multiplier the same with Rs.2,000/- to arrive at a quantum of compensation under the head of permanent disability. However, lump sum of Rs.75,000/- (Rupees Seventy Five Thousand only) has been awarded. Thereafter, another sum of Rs.2,59,200/- (Rupees Two Lakhs Fifty Nine Thousand and Two Hundred only) has been awarded as loss of future earning capacity. Therefore, he prayed for allowing the appeal.

8. Though the claimant has been served, there is no appearance either in person or through her counsel.

9. As far as the issue of negligence is concerned, the Observation Mahazar filed as Ex.P.3, which was prepared by the police officials will clearly establish that the rear portion of the TATA ACE vehicle and the front portion of the bus belonging to the Transport Corporation have been damaged. The appellant has also omitted to file the Motor Vehicle Inspector's Report therein to establish the nature of damage. A perusal of the deposition of R.W.1- Driver of the Transport Corporation has clearly established that the bus has dashed against the TATA ACE vehicle on its rear side. Therefore, it is clear that the Tribunal was right in arriving at the finding that the accident has happened only due to rash and negligent driving of the bus belonging to the Transport Corporation. Even assuming that the TATA ACE vehicle was over loaded, that has not been attributed to the accident and only the dashing of the bus against the rear side of the TATA ACE vehicle has caused the accident. Therefore, the Tribunal is right in holding, the Transport Corporation is responsible for the said accident. The said finding is confirmed by this Court.

10. As rightly pointed out by the learned counsel for the appellant/ Transport Corporation that the Tribunal has not adopted the proper method at the time of calculating the quantum of compensation. After arriving at a finding that the injured has sustained 60% of permanent disability ought to have multiplied with Rs.2,000/- to arrive at a quantum of compensation under the head of permanent disability. However, lump sum of Rs.75,000/- (Rupees Seventy Five Thousand only) has been awarded. Thereafter, the multiplier method adopted under the head of future earning capacity is not legally sustainable.

11. Therefore, this Court is of the view that the said award amount is modified to the extent as stated below:

A sum of Rs.1,80,000/- (Rupees One Lakh and Eighty Thousand only) (60% X 3000) under the head of permanent disability is awarded. The amount awarded by the Tribunal under the head of future earning capacity is hereby set aside. The injured has sustained permanent disability of 60%. Therefore, the injured is entitled for a sum of Rs.10,000/- (Rupees Ten Thousand only) towards pain and suffering. The rest of the quantum of award under the other

heads are hereby confirmed. Therefore, the total award is arrived at a sum of Rs.2,10,000/- (Rupees Two Lakhs Ten Thousand only). The said amount shall be paid by the appellant along with interest at the rate of 7.5% from 06.12.2012 till the date of realization.

12. In view of the above said facts, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. The excess amount, if any, shall be refunded to the appellant Corporation along with interest. There shall be no order as to costs.

17.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal/Sub Court,
Sankarankovil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR,J.

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