



C.M.A(MD)No.311 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.07.2023

Pronounced On : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.311 of 2019

and

C.M.P.(MD)No.3985 of 2019

Tamil Nadu State Transport Corporation Limited,
Coimbatore, Having office at No.37,
Mettupalayam Road, Coimbatore,
Executive Director.

: Appellant /Respondent

Vs.

Micheal

: Respondent/ Respondent

PRAYER :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 04.01.2018 passed in M.C.O.P.No.1 of 2017 on the file of the Motor Accident Claims Tribunal/III Additional District and Sessions Court, Thanjavur at Pattukkottai.

For Appellant : Mr.P.Prabhakaran.

For Respondents : Mr.S.Deenadhayalan.



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JUDGMENT

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The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1 of 2017, dated 04.01.2018 on the file of the Motor Accident Claims Tribunal/III Additional District Court, Pattukkottai.

2. The appellant/State Transport Corporation, who was made liable to pay compensation of Rs.6,01,630/- with interest at 7.5 % per annum to the respondent/claimant for the disability suffered by him consequent to an accident occurred on 30.08.2015, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. The case of the claimant is that on 30.08.2015 at about 02.30 pm., when the petitioner was travelling in the bus bearing Registration No.TN-33-N-2426, by sitting in the last row, in Tiruppur to Trichy main road near Renganathanpuram Bus Stop, the bus driver drove the bus in a rash and negligent manner and dashed against the Tipper lorry and as a result of which, the petitioner sustained severe injuries and that the accident was occurred only due to the rash and negligent driving of the bus driver.



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4. It is the further case of the claimant that after the accident, he was immediately, taken to Amaravathi Hospital, Karur through ambulance and after first aid treatment, he was admitted in the Ganga Hospital, Coimbatore on 30.08.2015 and was discharged on 14.09.2015; that he underwent surgery on his right hand, that subsequently he was admitted on 02.12.2015 and was discharged on 11.12.2015 and that the petitioner has suffered permanent disability and he is not in a position to do any work as before. It is their further case that he was working on contract basis with Banian Factory at Tiruppur and was earning more than Rs.25,000/- per month.

5. Before the Tribunal, the appellant/State Transport Corporation had remained ex-parte. During trial, the respondent/claimant has examined himself as P.W.1 and Medical Officer Dr.Chellappan as P.W.2 and exhibited 14 documents as Ex.P.1 to Ex.P.14.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of the claimant side, has passed the impugned order, dated 04.01.2018, by holding that the accident



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was occurred only due to the rash and negligent driving of the bus driver, directed the Transport Corporation to pay compensation of Rs.6,01,630/- with interest at 7.5% per annum from the date of petition till the date of realization. Aggrieved by the said award, the Transport Corporation has preferred the present appeal.

7. The learned counsel for the appellant would submit that one unidentified tipper lorry, which came in the opposite direction in a rash and negligent manner, while overtaking the mini auto, which was going ahead, dashed against the right side body of the bus upto rear side and caused the accident and that the driver of the unidentified tipper lorry was solely responsible for the accident; that the sister of the claimant gave a complaint only against the tipper lorry driver and on that basis, F.I.R., came to be registered against the lorry driver and that the appellant's driver was in noway responsible for the accident.

8. The learned counsel for the appellant would further submit that the compensation awarded at Rs.6,01,630/- is very high, excessive and exorbitant and that the Tribunal has awarded more amounts for each and every head.



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9. The points that arise for consideration are as follows :

(i) Whether the Tribunal erred in mulcting liability on the appellant, despite the fact that the sister of the injured gave a complaint only against the driver of the tipper lorry and on that basis, F.I.R, came to be registered against the tipper lorry driver and without considering the way in which, the accident had occurred. ?

(ii) Whether the quantum of compensation awarded at by the Tribunal is just and proper and is in accordance with law ?

10. The claimant/injured has given evidence reiterating the contentions raised in the claim petition with regard to the mode of accident. P.W.1 would say that he was travelling in the appellant's bus by sitting in the last row, at the place near Ranganathanpuram Bus Stop and at about 02.30 pm., on 30.08.2015, the bus driver drove the bus in a rash and negligent manner and dashed against the tipper lorry, which came in the opposite direction and as a result of which, he sustained serious injuries on his right hand and that immediately, he was taken to Amaravathi Hospital, Karur through ambulance.



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11. Since the appellant had remained ex-parte, the evidence of P.W.1 remained unchallenged.

12. The main contention of the appellant is that the F.I.R., was registered only against the tipper lorry driver and that too on the basis of the complaint lodged by the claimant's sister. P.W.1, in the claim petition as well as in the affidavit would say that while he was in the Hospital, his sister went to the Police Station for preferring the complaint, that the Police had taken signatures from his sister; that the claimant subsequently came to know that the F.I.R., was registered, as if the tipper lorry driver was responsible for the accident; that the claimant had immediately sent a complaint to the Superintendent of Police narrating the manner in which, the accident was occurred; that the claimant has also filed a petition in CrI.O.P.(MD)No.9591 of 2016 before this Court and that he has produced the copy of the complaint sent to the Superintendent of Police, Karur District.

13. It is not known as to whether the appellant has taken any steps for setting aside the ex-parte order passed by the Tribunal and to contest



the claim petition. Though the appellant has been alleging that the tipper lorry driver was only responsible for the accident and the bus driver was not at fault, that they have not chosen to contest the claim petition before the trial Court nor taken any steps to produce the materials before this Court to substantiate their defence.

14. Except, Ex.P.1/F.I.R., the appellant has not shown any other material to prove the mode of the accident. It is not known as to whether the jurisdictional Police has closed the F.I.R., as charge abated or file any other report with different finding. The appellant has not even chosen to produce the rough sketch and final report, filed by the jurisdictional Police. Considering the above, the finding of the Tribunal that the accident was occurred only due to the rash and negligent of the bus driver cannot be found fault with.

15. Now turning to the quantum of compensation, the Tribunal has awarded total compensation of Rs.6,01,630/-. The claimant, in order to prove the injury suffered and the consequent disability, has produced the discharge summary under Ex.P.5 and Ex.P.12; disability certificate under Ex.P.7 and Ex.P.13 and other medical records under Ex.P.8 and Ex.P.9.



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16. It is evident from Ex.P.5 that the claimant was admitted in Ganga Medical Centre and Hospital Private Limited, Coimbatore on 30.08.2015 and was discharged on 14.09.2015 and the injuries suffered by him are described as “major side sweep injury right elbow with open floating elbow with composite tissue loss with crush avulsion near total amputation at lower third humerus with shattered elbow joint with distal avascularity with thumb is early rigor mortis with segmental fracture right humerus with segmental both bone forearm fracture right.”

17. It is evident from Ex.P.12, he was admitted again on 02.12.2015 in Ganga Hospital and was discharged on 11.12.2015 for follow up treatment and during that period, right elbow arthrodesis was done. Admittedly, it is not the case of the claimant that he suffered permanent disability and consequent functional disability.

18. Ex.P.7 is the disability certificate issued by the Government Hospital, Orathanadu, wherein that the claimant's disability was fixed at 70%. It is evident from Ex.P.13 given by P.W.2/Doctor that he sustained partial permanent disability at 70%. The Tribunal, taking note of the



injuries and the consequent disability, in the light of the medical records produced, has granted Rs.90,000/- towards disability.

19. The Tribunal, taking note of the medical bills under Ex.P.9, has rightly awarded a sum of Rs. 3,88,930/- towards medical expenses. The Tribunal has also awarded a sum of Rs.10,000/- for transportation charges; Rs.15,000/- for extra-nourishment charges; Rs.5,200/- for attender charges during treatment and Rs.18,000/- towards attender charges after the treatment for three months; Rs.19,500/- for loss of income for three months; Rs.50,000/- for pain and sufferings and Rs.5,000/- for loss of articles.

20. Considering the nature of injuries sustained, period of treatment, consequent disability and other attending circumstances, the amounts awarded at by the Tribunal are reasonable and cannot said to be excessive. Hence, this Court is not inclined to interfere with the compensation awarded at by the Tribunal. Consequently, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.



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21. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 04.01.2018 passed in M.C.O.P.No.1 of 2017 on the file of the Motor Accident Claims Tribunal/III Additional District and Sessions Court, Thanjavur, is confirmed. Parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

18.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das

To

1.Motor Accident Claims Tribunal/III Additional
District and Sessions Court, Thanjavur at Pattukkottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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