



C.M.A(MD)No.1257 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.1257 of 2023

and

C.M.P(MD)No.16691 of 2023

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Palavan Salai,
Chennai-629 162.

2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Nesamani Nagar,
Nagercoil.

... Appellant

.vs.

P.Britto Manoj

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the order of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thoothukudi, made in M.C.O.P.No. 231 of 2017, dated 09.12.2022 and allow the appeal with costs.

For Appellants : Mr.S.Micheal Heldon Kumar

For Respondent : Mr.T.Selvakumaran



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JUDGMENT

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This appeal is filed challenging the award passed in M.C.O.P.No. 231 of 2017, dated 09.12.2022, on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate's Court, Thoothukudi.

2. The respondent filed the aforesaid claim petition seeking compensation of Rs.25,00,000/- for the injuries and disability suffered in the accident. It is claimed in the claim petition that on 07.02.2017 at about 16.10 hours the respondent was riding his motorcycle bearing Registration No.TN-75-Q-2191, with his wife as pillion rider in Alanchi to Kurumpanai Road from south to north direction. When he was nearing Inigo Nagar Bus Stop, the appellant Corporation bus bearing Registration No.TN-74-N-1620 had come on the opposite direction in a rash and negligent manner and dashed against the claimant's motorcycle. As a result, the claimant suffered multiple injuries including fracture injuries. He had undergone surgical treatment. He suffered disability in the accident. He was working as fisherman and fish seller and earning a sum of Rs.20,000/- per month. Due to the accident and disability suffered, he is not able to work as he was used to work.



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3. This claim petition is opposed by the respondent claiming that the Transport Corporation Bus driver was not responsible for the accident. It was the respondent, who had come in a two wheeler in a rash and negligent manner, crossed the midline of the road and hit against the right bumper portion of the bus. Therefore, the motorcycle rider was primarily responsible for the accident. The compensation claimed is excessive.

4. During the enquiry before the Tribunal, on the side of the claimant, P.W1 was examined and Ex.P1 to Ex.P17 were marked and on the side of the Transport Corporation, R.W1 was examined and Ex.R1 was marked.

5. On the basis of oral and documentary evidence, the learned Tribunal awarded a sum of Rs.6,22,665/- as compensation. Challenging this award on the ground that when the respondent had contributed to the accident, the Tribunal had omitted to apportion any liability to the respondent for his contributory negligence in causing the accident. Thus, this appeal is filed. In support of his submission, the learned counsel for the appellant submitted that the First Information Report shows that the



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injured/respondent had alone responsible for the accident.

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6. In response, the learned counsel for the respondent submitted that the Tribunal had rightly fixed the responsibility for causing the accident on the Transport Corporation bus driver. After the accident, the injured had been taken to the hospital for treatment and he was taking treatment as inpatient. Taking advantage of his position, the Transport Corporation bus driver had given a complaint, with the false allegation alleging that the accident had happened because of the rash and negligent driving of the two wheeler rider. First Information Report cannot form basis for concluding that the respondent had contributed to the accident. The alleged contributory aspect is not proved by the appellant.

7. Considered the rival submission and perused the records.

8. The only point required to be considered in this appeal is:

“Whether the respondent had contributed to the accident?”

9. As rightly pointed out by the learned counsel for the appellant, Ex.P5 shows that the respondent had ridden the two wheeler in a rash



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and negligent manner, crossed the wrong side of the road and hit against the right side of the bus. However, the complaint was given by the appellant Corporation driver. Due to the injury suffered in the accident, the respondent, probably was not able to go to police station and lodge a complaint immediately. Once the Transport Corporation bus driver gave the complaint, that was received and registered on the basis of the allegation contained in the complaint. Both the parties have not produced any oral evidence in support of their case for the manner, in which, the accident had happened.

10. It is a case of the respondent that when he was going from south-north keeping left side of the road, the bus driver had come in the opposite direction in a rash and negligent manner and caused the accident. The case of the appellant is that the respondent who had come to the wrong side of the road and caused the accident. The fact that the accident had happened and the respondent suffered injuries and disability, is not in dispute. In the absence of any independent oral evidence in support of the manner in which the accident had happened, the other best evidence available, is the Rough Sketch prepared by the police. Unfortunately, the Rough Sketch is not marked as an exhibit.



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The Rough Sketch would have shown the exact place of the accident .

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11. It is claimed by the appellant that the two wheeler rider had come on the wrong side of the road and dashed against the Transport Corporation bus. It is expected that the Rough Sketch prepared by the police is be produced as an exhibit by the respondent. That was not done in this case. The learned Tribunal, on going through the oral and documentary evidence, had fixed that the Transport Corporation driver alone was responsible for the accident. This Court is of the view that when the respondent has not produced the copy of the Rough Sketch as an exhibit, the interested testimony of RW1, namely, the Transport Corporation bus driver cannot be taken into consideration. From the manner in which the accident had happened, injuries suffered, this Court is of the view that the responsibility/liability fixed on the Transport Corporation bus driver for causing the accident needs no interference. Accordingly, the finding, in this regard, arrived at by the learned Tribunal is confirmed. The quantum of compensation is not challenged. Therefore, the quantum of compensation awarded by the Tribunal is also confirmed.



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12. In fine, this Civil Miscellaneous Appeal is dismissed and the order passed by the Tribunal is upheld. The second appellant – Transport Corporation is directed to deposit the compensation awarded by the Tribunal, i.e., Rs.6,22,665/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, less the award amount already deposited, if any, to the credit of M.C.O.P.No.231 of 2017, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thoothukudi, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made by the second appellant, the claimant is permitted to withdraw the same, less the award amount if any already withdrawn, after following due process of law. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
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11.12.2023

To

The Motor Accident Claims Tribunal/
Chief Judicial Magistrate,
Thoothukudi.



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G.CHANDRASEKHARAN,J.

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