



C.M.A(MD).No.833 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.04.2023

PRONOUNCED ON : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.833 of 2019

The Managing Director
Tamil Nadu State Transport Corporation
Trichy

... Appellant

vs.

Dr.Sathish

...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree passed by the Motor Accident Claims Tribunal, Special Court for E.C. & NDPS Act Cases, Pudukkottai in MCOP.No.104 of 2016 dated 19.03.2019.

For Appellant : Mr.D.Sivaraman

For Respondent : Mr.S.Ilangovan



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JUDGMENT

The appeal has been filed by the Transport Corporation challenging the award passed by the Motor Accident Claims Tribunal, Pudukkottai in MCOP.No.104 of 2016 contending that no accident has taken place as alleged by the claimant.

2.According to the claimant, he is a medical practitioner and he had boarded a Government bus for travelling from Chennai Koyambedu to Trichy on 23.12.2015. While the bus was crossing Perambalur at about 6.00 a.m, the driver of the bus had driven the vehicle in a rash and negligent manner and he was thrown upward towards the roof of the bus and he fell down on the iron rod of the handle. The said iron rod had caused injury to the vertebral column of the petitioner.

3.The claimant had further contended that originally he was admitted as an inpatient in the Government Hospital, Trichy and after emergency treatment, he got admitted to a private hospital at Karaikudi for further treatment. In view of the said accident, the claimant has sustained compressed fracture in D3, D12 and L1 in the vertebral



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column. In view of the said accident, he had been advised to be in continuous treatment for a period of 6 months. Since he is working as a Doctor on a temporary basis, he cannot avail medical leave and he had taken leave on loss of pay. The claimant had further contended that in view of the said fracture, he could not stand up after sleep and he finds it difficulty to carry out day- to-day work. Hence, he had prayed for a sum of Rs.30,00,000/- as compensation.

4.The Transport Corporation has filed a counter contending that the bus was not driven in a rash and negligent manner by the driver of the Corporation bus and no such accident has taken inside the bus. The claimant had never made any complaint to the driver or the conductor. In case, if such a serious accident has happened inside the bus, the other passengers would have shouted for stopping the bus.

5.The respondent had further contended that though the accident is said to have happened at 6.00 a.m on 23.12. 2015, the police complaint has been lodged only on 30.12.2015. No explanation has been offered for the belated filing of the police complaint. Therefore, it is clear that the claimant has created an F.I.R only for the purpose of filing a claim



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petition. There is no connection whatsoever between the alleged accident and the injuries said to have been sustained by the claimant. Therefore, the Corporation is not liable to pay any compensation.

6.The Tribunal after considering the oral and documentary evidence had relied upon the F.I.R and the deposition of PW1 and RW1 and arrived at a conclusion that the accident has taken place only due to the rash and negligent driving of the respondent driver. The Tribunal further found that the claimant had sustained compressed fracture in D3, D12 and L1 of the vertebra and hence, the injuries are very serious in nature. Based upon Exhibits P2 to P4 and P11, the Tribunal had arrived at a finding that the injuries are grievous in nature and the claimant is not able to continue his normal day-to-day work. The Tribunal relied upon the evidence of PW2, the Government Doctor who had given treatment to the claimant and Exhibit P10-the disability certificate issued by the medical board and arrived at a finding that the claimant is disabled to an extent of 40%. The income of the injured claimant was fixed at Rs.47,790/- based on Exhibit P6-pay drawn particulars. The Tribunal arrived at a functional loss at 5% and applied a multiplier of 17 and



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arrived at the loss of future earning at Rs.4,87,458/-. The total compensation was arrived at Rs.6,44,000/-. The said award is under challenge in the present appeal by the Transport Corporation.

7.The learned counsel for the appellant had vehemently contended that a reading of claim petition will indicate that as if the claimant was thrown up to the roof of the bus and he had fallen down on the iron rod of the seat handle and he had sustained the alleged injuries. There is no possibility of being thrown up to the level of the roof and again being fallen on the iron rod of the seat handle. The entire case projected by the claimant is highly unbelievable. If really such a serious injury was caused to the claimant, the co-passengers would have shouted and called for the help from the driver and the conductor. The claimant has not chosen to examine any one of the co-passengers.

8.The learned counsel for the appellant had further contended that the bus would have reached Trichy bus stand at about 7.00 a.m and the claimant has never made any complaint to the officials of the bus depot against the driver or the conductor. Therefore, the petitioner being a Doctor has used his influence and got admitted in the Government



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Hospital at Trichy alleging that there was a road traffic accident.

However, no F.I.R was registered on 23.12.2015.

9.The injured claimant had got himself discharged from the said hospital and got admitted in a private hospital at Karaikudi on 24.12.2015 itself. However, the F.I.R which was registered on 30.12.2015 indicates that as if the statement of the injured claimant was recorded in the Government hospital on 30.12.2015. The case sheet maintained by the Government hospital clearly indicates that the injured claimant had got discharged from the hospital on 24.12.2015 itself. Therefore, the F.I.R has been created for the purpose of getting compensation from the Transport Corporation. The manner of accident is highly doubtful. The conduct of the injured claimant especially as a Doctor is not believable.

10.The learned counsel for the appellant had further contended that in the F.I.R, it is stated that after the accident, he could not even sit and he was lying on the floor of the bus. If such an accident has taken place, certainly the other co-passengers should have shouted and stop the bus. At least at Trichy depot, either the claimant or some of the



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co-passengers would have lodged a complaint as against the driver and the conductor of the bus. However, nothing was reported to the police authorities till 30.12.2015. Therefore, the injury that is said to have been sustained by the claimant is in no way relatable to his bus travel on 23.12.2015.

11.The learned counsel for the appellant had further contended that when the Transport Corporation had raised serious doubt and pointed out the discrepancy in the manner of accident and registration of F.I.R, entire burden is upon the claimant to establish the said fact. When the injuries have not been sustained by the claimant, during his travel in the Transport Corporation bus, the appellant is not legally liable to pay any compensation whatsoever. However, the Tribunal has not properly appreciated any one of the above said submissions and has proceeded to arrive at a finding that the accident has taken place only due to the rash and negligent driving of the driver of the Transport Corporation. Hence, he prayed for allowing the appeal.

12.Per contra, the learned counsel appearing for the respondent had contended that the driver of the bus has been examined as RW1.



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During his cross examination, he has categorically admitted that the injured claimant boarded the bus at Chennai Koyambedu at about 1.00 a.m on 22.12.2015 and therefore, there is no dispute about the fact that the injured claimant had travelled in the said bus at the relevant point of time.

13.He had further contended that at about 6.00 a.m on 23.12.2015 due to rash and negligent driving of the driver of the bus, the claimant was thrown up and he sustained compressed fracture in D3, D12 and L1 in vertebra column. Despite the fact that he requested the driver and the conductor to stop the bus for seeking medical help, they did not heed to his request. Immediately on reaching Trichy bus stand, he had called 108 Ambulance and reached the Government Hospital,Trichy at 8.00 a.m.

14.The learned counsel for the respondent had further contended that the Doctor who have given treatment to the clamant has been examined as PW2. He has categorically contended that the patient was admitted at about 8.00 a.m for compressed fracture in vertebra column and he got himself discharged from the hospital on 24.12.2015. The learned counsel had further contended that the other medical records



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from the private hospital namely Exhibits P3 and P4 would clearly indicate that the claimant has sustained compressed fracture in D3, D12 and L1 of the vertebra. The case sheet maintained by the Government Hospital, Trichy has been marked as Exhibit P11 which shows that the petitioner has undergone the X-ray and M.R.I. Scan for the said compressed fracture. Therefore, it is clear that the accident and the injuries sustained by the claimant in the said accident have been proved by the claimant.

15. The learned counsel had further contended that immediately after the claimant was admitted to the Government Hospital, Trichy, an Accident Register has been prepared which is enclosed along with Exhibit P11 case sheet. Even though the information was sent to the police immediately, when the police arrived, the claimant had already got admitted in a private hospital at Karaikudi from where his statement was recorded. However, due to mistake, the police officials have recorded in the F.I.R that the statement of the injured claimant was recorded in the Government hospital at Trichy. This inadvertent mistake on the part of the police officials cannot be put against the claimant. Therefore, viewed



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from any angle, the claimant had established that he had sustained injuries due to the accident that has taken place inside the bus while he was travelling. Hence, he prayed for confirming the award passed by the Tribunal and to dismiss the appeal.

16.I have considered the submissions made on either side and perused the materials available on record.

17.The primary contention of the learned counsel appearing for the appellant is that no such accident has taken place inside the bus while the claimant was travelling and the medical records and the F.I.R have been created for the purpose of claiming compensation from the Transport Corporation.

18. The bus having started at Chennai Koyambedu would have crossed Perambalur at about 6.00 a.m and reached Trichy at about 7.00 a.m. The case records maintained by the Government Hospital at Trichy which is marked as Exhibit P11 indicates that the claimant was admitted to the Hospital at about 08.02 a.m. The medical records further discloses that it has been registered as medico-legal case and number has also been assigned. It has been diagnosed as compressed fracture in D3, D12 and

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L1 vertebra. The petitioner had undergone MRI scan which also discloses that there is a compressed fracture in D3, D12 and L1 of the vertebra. The Ortho Doctor had referred him to Neuro Doctor in the Government Hospital. Later the claimant has been discharged at about 12.55 p.m on 24.12.2015 at the request of the father of the injured claimant.

19.A perusal of Exhibit P4 indicates that the claimant got admitted himself to Multi Care Hospital at Karaikudi on 24.08.2015 and thereafter, he had taken treatment in Adithya Hospital at Karaikudi. Exhibit P9 indicates that the claimant had taken treatment for compression without any wedge and without any cord compression in Neuro One Hospital.

20.The learned counsel for the appellant had raised doubt about the accident on the ground that such a serious injury would not have happened while travelling in the bus in a seated position. He had further contended that the F.I.R. was registered on 30.12.2015 as if the injured claimant was still in the Government Hospital Trichy is also doubtful.

21.Let us consider the contentions raised by the learned counsel appearing for the appellant:

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(i).The medical records clearly indicate that the claimant has sustained compressed fracture in D3, D12 and L1 vertebra. There cannot be any dispute that the said injuries were sustained by the claimant. There is every possibility of sustaining such injuries, even while travelling in a seated position when the body is slightly thrown up from the seat level and suddenly brought down. Therefore, the contention of the learned counsel for the appellant that there is no possibility of such a compressed fracture while travelling in a seated position is not legally sustainable. The claimant was admitted to the Government Hospital at Trichy on 23.12.2015 and the Accident Register has already been prepared by the said Hospital which is enclosed as part of Exhibit P11. Therefore, it is clear that the Government Hospital, Trichy have given information to the police relating to the road traffic accident. The claimant was discharged from the said hospital on 24.12.2005 is also an admitted fact. However, a perusal of Exhibit P1-F.I.R dated 30.12.2005 discloses that as if the statement of injured claimant was recorded at Government Hospital, Trichy on the said date. The police officials have taken their own time to reach the Government hospital, Trichy only to find that the patient has



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been shifted to Karaikudi. In fact, the claimant as PW1 categorically admits in his cross examination that the police officials had recorded his statement only at Karaikudi.

(ii).A perusal of F.I.R further indicates that it is not a written complaint of the claimant, but the oral information of the claimant has been recorded by the police officials. Therefore, it is clear that some mistake had crept in inadvertently in the recording of the F.I.R for which the claimant cannot be found fault with. Therefore, both the suggestions raising suspicion relating to the manner of the accident and discrepancy and delay in registration of F.I.R do not in any way affect the case of the claimant. Therefore, this Court confirms the findings of the Tribunal that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Transport Corporation.

22.It is clear from the medical records under Exhibit P11 that the petitioner has sustained grievous injuries of compressed fracture in his vertebra. A disability certificate issued by the medical board under Exhibit P10 indicates that the disability at 40%. The Tribunal has arrived



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at a functional disability of 5%. There cannot be any dispute about the monthly income of the claimant in view of Exhibit P6-pay drawn particular. Therefore, this Court is of the view that the Tribunal has applied the correct multiplier and awarded a sum of Rs.4,87,458/- towards loss of future earnings and further sum under conventional damages and a total compensation of Rs.6,44,000/-. Therefore, there are no grounds to interfere in the award passed by the Tribunal.

23.In view of the above said deliberations, this Civil Miscellaneous Appeal stands dismissed. No costs.

26.04.2023

Index : Yes/No
Internet : Yes/No
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To
1. The Motor Accident Claims Tribunal,
Special Court for E.C. & NDPS Act Cases,
Pudukkottai

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

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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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