



C.M.A(MD)No.802 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.07.2023

Pronounced On : 01.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.802 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Srivaikundam Branch,
Thoothukudi District. : Appellant / 1st Respondent

Vs.

1.Karuppasamy : 1st Respondent/ Petitioner

2.Esakki

3.United India Insurance Company Limited,
Arasan Buildings, 1st Floor,
50/1 High Road,
Tirunelveli Junction – 627 001. : Respondents 2 & 3/
Respondents 2 & 3

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree made in M.C.O.P.No.1414 of 2010, dated 12.07.2013 on the file of the Motor Accident Claims Tribunal/II Additional District Court, Tirunelveli.



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For Appellant : Mr.P.Prabhakaran,

For Respondents : Mr.N.Murugesan, for R3.

: No Appearance, for R1 & R2.

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, challenging the award, dated 12.07.2013, passed in M.C.O.P.No.1414 of 2010 on the file of the Motor Accidents Claims Tribunal/II Additional District Court, Tirunelveli.

2. The Appellant/Transport Corporation, who was directed to pay compensation of Rs.2,90,000/-, being 50% of the award to the claimant/injured for the disability suffered, consequent to an accident occurred on 14.06.2010, challenging the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.



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3. The case of the claimant/injured is that on 14.06.2010 at about 15.30 hours near Vellur – Nalamadai turning road, one Government Bus bearing Registration No.TN-72-N-0892 on a trip from Srivaikundam to Sathankulam came from north to south direction in a rash and negligent manner and dashed against one TVS XL Super bearing Registration No.TN-69-Q-8374 and as a result of which, the rider of the two wheeler Natarajan and the pillion riders Mariyappan and the claimant fell down and sustained serious injuries; that the claimant was noway responsible for the accident and that the accident was occurred only due to the rash and negligent driving of the bus driver and the two wheeler rider.

4. The appellant/first respondent corporation has taken a defence that the rider of the motor cycle came with two pillion riders in a rash and negligent manner and in terrific speed beyond the middle line and on seeing the two wheeler, the bus driver had driven the bus to the left side of the road, but the two wheeler rider unable to control the vehicle had dashed against the right side body of the bus and as a result of which, the rider and the pillion riders of motor cycle fell down and sustained



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injuries and that the accident was occurred only due to the rash and negligent driving of the motor cycle rider.

5. The third respondent/insurer has taken a stand that the accident was occurred only due to the rash and negligent driving of the bus driver.

6. It is pertinent to note that on the basis of the complaint lodged by the bus driver, FIR in Crime No.196 of 2010 came to be registered for the offence under Sections 279 and 337 of IPC. The jurisdictional Police, after completing the investigation, has laid the charge sheet against the two wheeler rider for the offence under Sections 279, 337 and 338 I.P.C.

7. It is not in dispute that the bus involved in the accident is belonging to the appellant/first respondent corporation and that the two wheeler was owned by the second respondent and the same was insured with the third respondent.

8. The claimant in his evidence before the Tribunal has stated that the bus driver was responsible for the accident. Though the first



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respondent and the third respondent have taken a stand that their drivers were not responsible for the accident, they have not chosen to examine the bus driver as well as the two wheeler rider.

9. Admittedly, the third respondent against whom also liability was mulcted and was directed to pay 50% of the award amount, has not preferred any appeal. As already pointed out, though the appellant has taken a specific stand that the accident was occurred only due to the rash and negligent driving of the two wheeler rider, they have not chosen to adduce any evidence.

10. As rightly observed by the learned trial Judge, mere registration of FIR is not sufficient enough to prove the negligence and even assuming for argument sake that there is a finding of the criminal Court mulcting criminal liability on any one of the driver, the same is not binding on the Tribunal and the Tribunal is duty bound to consider the evidence placed before it and decide as to who was responsible for the accident.



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11. It is pertinent to note that the claimant himself in the claim petition has specifically stated that the accident was occurred only due to the rash and negligent driving of both the drivers.

12. Considering the above and also taking note of the fact that the appellant has not adduced any evidence to prove that the two wheeler rider alone was at fault, the finding of the Tribunal that the bus driver and the two wheeler rider were equally responsible for the accident, cannot be found fault with.

13. Now turning to the quantum of compensation awarded, it is the specific case of the claimant that after the accident, he was immediately taken to Srivaikundam Government Hospital and after first aid, he was referred to Tirunelveli Medical College Hospital, Palayamkottai and thereafter, he was referred to Government Rajaji Hospital, Madurai and that subsequently, he was admitted in Thiruvananthapuram Medical College Hospital; that the claimant's right leg was amputated above the knee level and that the claimant has suffered permanent disability. It is



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the further case of the claimant that the claimant is an agriculturist and is having milch animals and that he was earning Rs.7,000/- per month.

14. The learned counsel for the appellant would submit that the compensation awarded at Rs.2,90,000/- being 50% of the compensation is very excessive and exorbitant; that the Tribunal without any evidence has fixed the monthly income of injured at Rs.4,000/-, which is very much high; that the Tribunal erred in adopting multiplier method for computing the compensation and that granting of Rs.5,04,000/- for disability at 75% is also too high; that the amount awarded under various heads are also high and that the Tribunal has also awarded interest at 8% per annum, which is also very high.

15. The claimant, in order to prove his disability has examined P.W.2/Medical Officer and produced medical records under Ex.P.5 to Ex.P.12. It is evident from the medical records that the petitioner had taken inpatient treatment at Tirunelveli Medical College Hospital, Palayamkottai, Government Rajaji Hospital, Madurai and thereafter, Thiruvananthapuram Medical College Hospital and that his right leg was



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amputated above the knee level. P.W.2, after assessment has fixed the disability at 90%.

16. The Tribunal, taking note of the medical records produced and the evidence of P.W.1 and P.W.2, has rightly fixed the disability at 75%. Considering the facts that the claimant has suffered permanent disability and he is not in a position to do his day today work, the Tribunal has rightly applied multiplier method.

17. As already pointed out, according to the claimant, he has been earning Rs.7,000/- per month, but admittedly, he has not produced any iota of evidence to prove his income. But, the Tribunal, considering the age and nature of work stated by the claimant, has fixed the monthly income at Rs.4,000/- and arrived at Rs.5,04,000/- for loss of earning capacity. [Rs.48,000/- x 14 x 75 = Rs.5,04,000/-]

18. Since the claimant has produced medical bills for Rs.15,729/- ; and as the same was not specifically disputed by the appellant as well as by the insurer, the Tribunal has granted the said amount towards medical



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expenses. The Tribunal has also awarded Rs.40,000/- towards pain and suffering; Rs.10,000/- for extra nourishments and Rs.10,000/- towards travel expenses all totalling Rs.5,79,729/- rounded to Rs.5,80,000/-.

19. Considering the nature of injuries suffered and the consequent permanent disability sustained, period of inpatient treatment, the amount awarded for pain and suffering, extra nourishment and travelling expenses are reasonable and the same cannot said to be excessive.

20. As rightly contended by the learned counsel for the appellant, the claimant is entitled to get interest only at 7.5% per annum from the date of petition till the date of realization. The appellant has not canvassed any other reason or ground to impugn the award. Hence, this Court concludes that the above 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.



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21. In the result, the Civil Miscellaneous Appeal is dismissed.

The appellant/first respondent is directed to pay Rs.2,90,000/- (Rupees Two Lakhs Ninety Thousand Only) with interest at 7.5% per annum from the date of petition till the date of realization within a period of four weeks from the date of receipt of this judgment, if not deposited earlier and on such deposit, the claimant is permitted to withdraw the award amount with accrued interest and cost by filing proper application before the Tribunal. Parties are directed to bear their own costs.

01.08.2023

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

- 1.The Motor Accident Claims Tribunal/
II Additional District Court, Tirunelveli.
- 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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