



C.M.A(MD)No.1102 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 20.07.2023

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1102 of 2017

and

C.M.P.(MD)No.11212 of 2017

The Managing Director,
Tamil Nadu State Express Transport
Corporation Limited,
Dindigul, Dindigul District.

: Appellant

Vs.

Sudhandhiram

: Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 21.10.2013 made in M.C.O.P.No.864 of 2009 on the file of Motor Accident Claims Tribunal/III Additional Sub Judge, Madurai.

For Appellant : Mr.K.Sudalaiyandi

For Respondent : No Appearance



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J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.864 of 2009, dated 21.10.2013 on the file of Motor Accident Claims Tribunal/III Additional Sub Judge, Madurai.

2. The appellant/Transport Corporation, who was made liable to pay compensation of Rs.1,08,035/- with interest at 7.5% per annum to the respondent/claimant for the disability suffered, due to the accident occurred on 27.02.2009, challenging the liability mulcted on it and the quantum of compensation awarded at by the Tribunal.

3. The case of the claimant is that on 27.02.2009 at about 14.30 hours while the respondent/claimant was walking on the left side of Sholavanthan Market Road, the appellant transport corporation's bus bearing Registration No.TN-57-N-0846, which came in a rash and negligent manner, had dashed against the claimant and as a result of which, the claimant had sustained grievous injuries and he was immediately taken to Sholavanthan Government Hospital and after first



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aid, he was referred to Madurai Rajaji Hospital for further treatment and that the accident was occurred only due to rash and negligent driving of the bus driver.

4. The defence of the appellant/respondent is that the accident was not occurred due to the negligence of the bus driver; that the claimant got injured as he was hit by the unknown vehicle; that the claimant has lodged a false complaint against the bus driver and that the amount claimed under various heads are high and excessive.

5. During enquiry, the claimant has examined himself as P.W.1; one S.Balu as P.W.2 and Dr.P.S.Shanmugam, Medical Officer as P.W.3 and exhibited nine documents as Ex.P.1 to Ex.P.9. The appellant has examined one Rajendran as R.W.1 and exhibited four documents as Ex.R.1 to Ex.R.4.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment, dated 21.10.2013, holding that the accident was occurred only due to the rash and negligent driving of the



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bus driver and directed the appellant/Transport Corporation to pay a compensation of Rs.1,08,035/- with interest at 7.5 % per annum from the date of claim petition till the date of realization. Aggrieved by the said award, the Transport Corporation has preferred the present appeal.

7. The points for consideration are ;

(i) Whether the Tribunal erred in mulcting liability on the appellant/Transport Corporation, despite showing that the accident was caused by unknown vehicle and that a false complaint came to be lodged by the claimant against the driver of the appellant ?

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

8. It is not in dispute that on the basis of the complaint lodged by the claimant, F.I.R., came to be registered against the driver of the appellant under Ex.P.1 and that the jurisdictional Police, after conducting investigation, has laid the final report against the driver of the appellant.

9. No doubt, the jurisdictional Criminal Court, after conducting trial, has acquitted the bus driver, but the judgment of the Criminal Court



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is not binding on the Tribunal and the Tribunal is duty bound to consider the evidence available on record and to decide as to who is responsible for the accident. As rightly observed by the Tribunal that the back side of the foot-board of the bus had hit the claimant and caused injury.

10. Considering the evidence available on record, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the appellant's driver cannot be found fault with.

11. The claimant has produced the wound certificate under Ex.P.2; discharge summary issued by the Government Rajaji Hospital, Madurai under Ex.P.3; Medical Bills under Ex.P.4; case sheet of the Government Rajaji Hospital, Madurai under Ex.P.7 and disability certificate under Ex.P.8. The claimant has also produced X-Ray under Ex.P.9.

12. It is the case of the claimant that he had bone injury on his right hand; that surgery was conducted by implanting plates; that subsequently the bone injury got infected and that he had also sustained other injuries all over his body. The claimant has examined the Medical Officer/P.W.3 and he would say that the claimant had sustained bone



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injury on his upper right hand and that surgery was conducted on 17.03.2009 by implanting the plates; that he got infection on the said injury; that the movements of shoulder and elbow joints got restricted and that he has fixed the disability at 38% by certifying the same as partial permanent disability.

13. Considering the nature of the bone injury and the consequent disability and taking note of the medical evidence, the Tribunal has rightly applied percentage method and granted Rs.76,000/- as compensation for the disability suffered at 38%. The Tribunal has further awarded Rs.15,000/- towards pain and sufferings; Rs.5,000/- towards extra nourishment; Rs.9,000/- towards loss of income and Rs.1,035/- towards medical expenses.

14. Considering the nature of injury sustained, consequent disability suffered and the period of treatment, the amount awarded to the claimant under various heads are reasonable and the same cannot said to be excessive. During the arguments, the learned counsel for the appellant would submit that the Transport Corporation has already deposited the entire award amount including interest as directed by the Tribunal.



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Hence, this Court is not inclined to interfere with the quantum of compensation awarded 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.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 21.10.2013 passed in M.C.O.P.No.864 of 2009 on the file of the Motor Accident Claims Tribunal/III Additional Sub Judge, Madurai, is confirmed. Parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
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To

- 1.The Motor Accident Claims Tribunal/
III Additional Sub Judge, Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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