



C.M.A.(MD)No.668 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.01.2023

Delivered On : 23.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.668 of 2020

The General Manager

Tamil Nadu State Transport Corporation,

Maruthupathi, Karaikudi Nagar,

Sivagangai District.

... Appellant / 2nd respondent

Vs.

Subramanian

... Respondent /Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order, made in M.C.O.P.No.66 of 2016, dated 01.04.2019, on the file of the Motor Accidents Claims Tribunal – Sub Court, Devakottai.

For Appellant

: Mr.P.M.Vishnuvarthanan

For Respondent

: Mr.R.Jenifar Bibin



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award in M.C.O.P.No.66 of 2016, dated 01.04.2019, on the file of the Motor Accidents Claims Tribunal – Sub Court, Devakottai. The appellant herein is the respondent and the respondent herein is the claimant in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.66 of 2016, is as follows:-

On 09.06.2016, when the petitioner-Subramanian and his son travelled in a bus bearing registration No.TN-63-N-1419, the driver of the bus drove the vehicle in a rash and negligent manner and dashed against the lorry that came from the opposite direction. The petitioner sustained injuries. He was admitted in Karaikudi Government Hospital and then, he was taken to Madurai Devadoss Hospital. The right hand of the petitioner was amputated. The petitioner was working as a hotel supplier and he was earning Rs.15,000/- per month. The petitioner claim a sum of Rs.33,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P. No. 66 of 2016 is as follows:-



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The bus driver drove the vehicle in a careful and cautious manner. It was the petitioner, who kept his hand out side the bus. The petitioner was in a intoxicated mood and he failed to adhere to the wordings of the Conductor. It was the lorry driver, who was rash and negligent and dashed against the right side of the bus. The petitioner has to prove his age, income and profession. The respondent is not liable to pay compensation.

4. Two (2) witnesses were examined and 9 documents were marked on the side of the petitioner. One (1) witness was examined and no document was marked on the side of the respondent. After considering both sides, the Tribunal has awarded a sum of Rs. 13,51,287/- as compensation

5. Against the award, the appellant -Transport corporation has filed this Appeal on the following grounds:-

The Tribunal awarded compensation on humanitarian ground in a mechanical manner. The Tribunal failed to consider that it was the claimant, who kept his hand outside the bus in a drunken mood and there is no negligence on the part of the bus driver. The Tribunal is wrong in fixing the monthly income as Rs.12,000/-, without any evidence. The award is excessive.



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6. On the side of the appellant, it is stated that the Tribunal failed to note that it was the lorry driver, who was rash and negligent. 50% contributory negligence ought to have been fixed on the lorry driver. The lorry driver, owner and insurance company are necessary parties to the case.

7. On the side of the appellant, it is further stated that it was the claimant, who kept his hand out side of the bus and the accident has happened due to his own negligence.

8. On the side of the claimant, it is stated that the appellant has not chosen to examine any eye witness or the passengers of the bus. There is no evidence on the side of the appellant to prove that the lorry driver was responsible for the accident. It was the bus driver, who was rash and negligent. The bus driver was responsible for the accident.

9. From the evidence of P.W.1 and Ex.P1-F.I.R, it is decided that the accident has happened due to the rash and negligent driving of the bus driver. It is seen that at the time of accident, the claimant was having his hand outside of the bus and he contributed to the accident. Hence, 10% of contributory negligence is to be fixed on the claimant.



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10. On the side of the claimant, it is stated that the claimant was earning Rs.15,000/- per month and the salary certificate was marked as Ex.P9. The Tribunal fixed the monthly income as Rs.12,000/-.

11. On the side of the claimant, a judgment of the Hon'ble Supreme Court reported in **2015-1-TNMAC-161- SC (Neeta V. Divisional Manager, MSRTC)** is cited. A similar judgment of this Court reported in **2015-2-TNMAC- 171 (R.Mallika V. A.Babu)** is cited.

12. Discharge summary was marked as Ex.P5. Photos and CD were marked as Ex.P7. Wound certificate issued by the Devadoss Hospital, Madurai, was marked as Ex.P3. Disability Certificate issued by the Medical Board was marked as Ex.P2. Medical board assessed the disability as 60%, which is reasonable. For 60% disability, the Tribunal calculated the monthly income as Rs.7,200/- (Rs.12,000/- X 60/100) .

13. Considering the date of accident, it is decided that the monthly income fixed by the Tribunal is reasonable. The age of the claimant at the time of accident is 48 years, as per Ex.P6. Hence, multiplier '13' is applicable. After applying multiplier '13', the loss of income is calculated as Rs.11,23,200/- (Rs.7,200/- X 12 X 13).



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14. Medical Bills were marked as Ex.P4. The Tribunal has awarded a sum of Rs.1,58,087/- as medical expenses, which is reasonable. The Tribunal awarded Rs.15,000/- towards extra nourishment, Rs.15,000/- towards transport expenses, Rs.40,000/- towards pain and sufferings, which are all reasonable. In total the Tribunal has awarded a sum of Rs.13,51,287/- as compensation, which is reasonable. After deducting 10% Rs.1,35,129/- towards contributory negligence, the claimant is entitled to Rs.12,16,158/-.

15. This Appeal is partly allowed. No costs. The compensation is reduced from Rs.13,51,287/- to Rs.12,16,158/-.

(i) The appellant herein - Transport Corporation, is directed to deposit the entire compensation of Rs.12,16,158/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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(ii) On such deposit being made, the claimant is permitted to withdraw the entire award amount, on filing proper petition before the Tribunal. The appellant – Transport Corporation is permitted to withdraw excess amount, already deposited, if there is any. The claimant is not entitled for interest for the default period, if there is any. No costs.

23.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accidents Claims Tribunal –

Sub Court, Devakottai.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.668 of 2020

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