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C.M.A.No.1669 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.1669 of 2021
and C.M.P.No.8891 of 2021**

The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore Division-II) Limited,
Chenniamalai Road,
Erode. ... Appellant/Respondent-2

Vs.

1.Sumathi @ Dhanalakshmi

2.Eswaran

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2019 made in M.C.O.P.No.58 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani.

For Appellant : Mr.M.Murali Vinoth

For R1 : Mr.C.Kulanthaivel



C.M.A.No.1669 of 2021

WEB COPY

J U D G M E N T

The appellant, who is the Tamil Nadu State Transport Corporation, is before this Court by way of this appeal to set aside the judgment and decree dated 30.09.2019 passed in M.C.O.P.No.58 of 2016 by the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani.

2. The first respondent is the claimant. The case of the claimant is that on 14.04.2014 at about 05.30 p.m., when the first respondent was travelling as a pillion rider in a motorcycle bearing Reg.No.TN 39 J 6852 on Pallipalayam to Komarapalayam main road, Kupbandampalaym Bus Stop, the TNSTC Bus bearing Reg.No.TN 33 N 2238 was driven by the first respondent in a rash and negligent manner from opposite direction and dashed against the claimant's vehicle, due to which, she sustained multiple injuries all over the body. Thereby, the claimant filed a claim petition before the Tribunal seeking compensation against the second respondent and the appellant, who is the driver and the Managing Director of TNSTC Bus. The Tribunal has partly allowed the claim petition and determined the

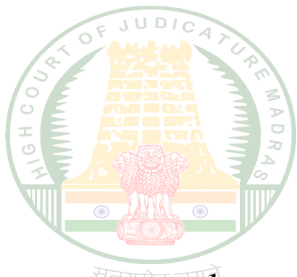


C.M.A.No.1669 of 2021

WEB COPY

compensation of Rs.13,51,197/- and directed the appellant/Transport Corporation to pay the compensation to the first respondent/claimant. Challenging the same, the present Civil Miscellaneous Appeal has been filed.

3. The learned counsel appearing for the appellant submits that P.W.2 is the rider of the motorcycle, in which, the claimant was travelling as pillion rider and even as per FIR registered on the basis of the complaint given by the first respondent/claimant, P.W.2 was riding the motorcycle in a rash and negligent manner and when the vehicle was nearing Kupbandampalaym Bus stop, it hit on TATA Ace Vehicle which was proceeding prior to the two-wheeler and thereby, the persons travelled in the two-wheeler fell down on the road and she sustained injuries, however, the owner and the insurer of the TATA Ace vehicle were not impleaded as parties. From the above, it is clear that P.W.2 is responsible for the accident. However, the liability was fixed against the appellant/Transport Corporation and the compensation awarded by the Tribunal is also excessive one. Hence,



C.M.A.No.1669 of 2021

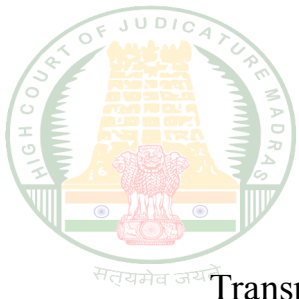
he prays for dismissal of this appeal.

WEB COPY

4. The learned counsel appearing for the first respondent submits that the driver of the appellant Transport Corporation has driven the bus in a rash and negligent manner and dashed against the first respondent's vehicle, due to which, the accident had occurred. In order to prove the same, the first respondent examined her husband as P.W.2, who is the rider of the motorcycle, and one eye-witness was examined as P.W.3 and thereby, the Tribunal fastened the liability against the appellant/Transport Corporation and the compensation awarded by the Tribunal is also on the lower side.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

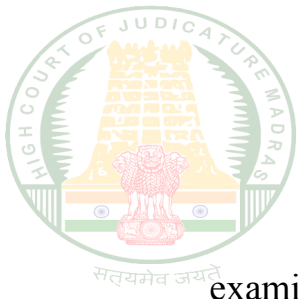
6. Admittedly, at the time of accident, the second respondent/first respondent in the claim petition drove the bus belonging to the appellant



C.M.A.No.1669 of 2021

WEB COPY

Transport Corporation. While so, the injured/claimant's vehicle which was coming in the opposite direction dashed behind the TATA Ace van and thereby, the persons travelled in the motorcycle fell down on the road and without noticing the persons fell down the road, the driver of the bus drove the vehicle and the front right side wheel of the bus passed over on both legs of the first respondent/claimant, due to which, she was severely injured and both legs were amputated. She was admitted in the hospital and took treatment as in-patient, for which, the Wound Certificate and the discharge summary were marked as Ex.P2 and Ex.P5. The medical records were marked as Ex.P6. Her both limbs at knee level were amputated. The Medical Board has given a Certificate by assessing the disability at 90% which was permanent in nature. The injured/claimant was aged about 26 years at the time of filing of the petition and was working as a coolie. Though the medical board assessed the disability of the petitioner as 90%, the loss of earning capacity is equal to 100% since the petitioner lost her both the lower limbs. Before the Tribunal, the first respondent was examined herself as P.W.1 and Ex.P1 to Ex.P7 were marked. The claimant's husband was



C.M.A.No.1669 of 2021

WEB COPY

examined as P.W.2. One eye witness was examined as P.W.3. According to the evidence of P.W.1 and P.W.2, the vehicle was driven by P.W.2 and P.W.1/injured/claimant was travelling as pillion rider and that the TNSTC bus belonging to the appellant Transport Corporation which was driven by the driver in a rash and negligent manner hit the motorcycle, in which, the injured/claimant was travelling. This portion was repeated by P.W.3, who is stated to be the eye-witness of the accident. Even in Ex.P1 which contains First Information Report, Observation Mahazar, rough sketch, MVI Report, Final Report and List of witnesses, it has been stated that the claimant was travelling as pillion rider in a motorcycle, in which, the claimant herself and her husband and their children were also travelling and the motorcycle hit on TATA Ace Vehicle proceeding prior to the motorcycle, in which, all the passengers travelling in the two-wheeler fell on the road side and without noticing the persons fell on the road, the driver of the bus drove the vehicle and the front right side wheel of the bus passed over on the both legs of the first respondent, however, the act of the rider of the motorcycle/P.W.2 was not pointed out by the appellant/Insurance Company before the Tribunal.



C.M.A.No.1669 of 2021

WEB COPY

Thereby, the Tribunal, based on the evidence of P.W.1 to P.W.3, has rightly come to a conclusion that the negligence was on the part of the driver of the bus belonging to the Appellant Transport Corporation.

7. Coming to the quantum of compensation, the claimant at the time of accident was working as a coolie and was earning a sum of Rs.10,000/- per month, but no proof was produced before the Tribunal. However, the Tribunal, took into consideration the judgment of the Hon'ble Apex Court in the case of *Sarla Verma & Others. Vs. Delhi Transport Corporation & Others (2009 (6) SCC 121)*, fixed the notional income at Rs.6,500/- adopting the multiplier of “17”. The first respondent was bedridden for more than three months, since her limbs were amputated and fixing the monthly income of Rs.6,500/- and awarding adequate quantum of compensation towards loss of earning during the period of treatment, pain and sufferings, transportation, extra nourishment, attender charges, loss of earning capacity and medical bills, the Tribunal has arrived at a total compensation of Rs.13,51,197/-. Therefore, this Court finds that the



C.M.A.No.1669 of 2021

WEB COPY

Tribunal has correctly concluded that the negligence was on the part of the bus driver, who drove the bus in a rash and negligent manner and since the manner of the accident was not disputed as deposed by P.W.1 to P.W.3, this Court is not inclined to interfere both on the ground of liability as well as the quantum of compensation. Accordingly, the award dated 30.09.2019 passed in M.C.O.P.No.58 of 2016 by the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, is hereby confirmed.

8. In the result, this civil miscellaneous appeal is dismissed. There shall be no order as to costs in this appeal. Connected miscellaneous petition is closed.

05.12.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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C.M.A.No.1669 of 2021

To

- 1.The Motor Accident Claims Tribunal,
Special Subordinate Court-2, Salem.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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C.M.A.No.1669 of 2021

M.DHANDAPANI, J.

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C.M.A.No.1669 of 2021

05.12.2024