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CMA.No.1653 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2024

CORAM:

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

CMA.No.1653 of 2023

Selvaraj Chakaraiyan

... Appellant

-Vs-

1.R.K.Selvakumar
2.The Managing Director,
Tamil Nadu State Transport Corporation
Coimbatore Limited,
No.37, Metturpalayam Road,
Coimbatore.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 08.08.2022 made in MCOP.No.16 of 2019 on the file of Exclusive MACT, Tirupur.

For Appellant	: Mr.Ma.P.Thangavel
For R1	: Ex-parte
For R2	: Mr.M.Murali Vinodh



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed challenging the fixation of liability and the quantum of compensation as awarded by Tribunal.

2.The case of the appellant is that on 11.10.2018 at about 13.00 hrs when the appellant was riding the bike bearing Regn.No.TN 42 D 9133, on the Kallimadai road, near Ugayanoor Piruvu, the 1st respondent drove the bus bearing Regn.No.TN 38 N 1178 in a rash and negligent manner and dashed against the appellant. The appellant sustained grievous injuries on his head, leg and abrasions all over his body. The appellant was taken to GH, Palladam, and then he was shifted to CMCH, Coimbatore. The appellant was aged 25 years at the time of the accident and was working as an operator in the Production Department at Stanfab Apparels, Tiruppur.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the two wheeler. However, directed the 2nd respondent-Transport Corporation to pay a sum of **Rs.25,000/-** as compensation to the appellant under the head of 'no fault liability'.



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4. Aggrieved over the fixation of liability and the quantum of compensation awarded, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant would contend that the accident occurred due to the rash and negligent driving on the part of the driver of the bus. He would further state that in the FIR, it has been clearly stated that the accident occurred due to the rash and negligent driving on the part of the driver of the bus. Further, after thorough investigation the police have also filed a final report and in that also, it has been stated that the accident occurred due to the rash and negligent driving on the part of the driver of the bus. Further, the claimant as PW1 has deposed that the accident occurred due to the rash and negligent driving on the part of the driver of the bus.

6. The Tribunal however, did not take into consideration all these aspects and has only relied on Ext.P.2 rough sketch and fixed the entire



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liability on the driver of the two wheeler. He would further submit that evidence of PW1 as well as the other evidence are against the driver of the bus. However, no finding was given on that. Therefore, he would submit that without considering all these aspects, the entire liability was fastened against the claimant. Thus, the award of the Tribunal has to be set aside and fix the negligence on the part of the driver of the bus and fix the liability accordingly.

7. According to the learned counsel for the second respondent, the rider of the two wheeler himself came and hit on the bus and invited the accident. Therefore, the Tribunal has taken into consideration the rough sketch and has come to the conclusion that the accident occurred due to the rash and negligent driving on the part of the rider of the two wheeler. However, the Tribunal awarded a compensation of Rs.25,000/- under the category 'no fault liability' and directed the respondent Transport Corporation to pay the said sum. Therefore, the Award of the Tribunal does not require the interference of this Court and the same may be confirmed.

8. Heard the learned counsel for the appellant as well as the second



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respondent.
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9. In the present case, the accident occurred on 11.10.2018 at about 13.00 hrs. The appellant proceeded from west to east and the bus proceeded from east to west on the Kallimadai road, near Uhayanoor Pirivu, where the accident occurred. The Tribunal relied on the rough sketch filed by the police and has come to the conclusion that the accident occurred due to the rash and negligent driving on the part of the rider of the two wheeler. Hence, fastened 100% liability against the rider of the two wheeler. However, the FIR was filed based on a complaint given by a person, who saw the accident in person and he has stated in the FIR that only the bus driver drove the vehicle in a rash and negligent manner and that is the cause for the accident. The rough sketch was prepared by the police after the FIR. Subsequently, after thorough investigation, the police filed a final report. In the final report also they have found that cause for the accident is the driver of the Corporation Bus, who has driven the bus in a rash and negligent manner. Further, the appellant as PW1 has deposed that the accident occurred due to the rash and negligent driving of the driver of the bus. However, RW1, who is the driver of the bus stated that the accident



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occurred not due to the rash and negligent driving of the bus but, due to the negligence on the part of the rider of the two wheeler.

10.After taking into consideration the oral as well as documentary evidence, the Tribunal has come to the conclusion that the cause for the accident is the rider of the two wheeler. It is settled law that mere position of the vehicles after accident, as shown in the rough sketch cannot be a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and direction etc., depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

11.In the present case, to corroborate the rough sketch, no other evidence is available. On the other hand, the FIR was initially filed against



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the driver of the bus and to find out the genuinity of the FIR, investigation was also conducted and after thorough investigation and examination of the rough sketch, the police have come to the conclusion that the cause for the accident is due to the rash and negligent driving on the part of the driver of the bus. Without any corroborative evidence, the Tribunal ought not to have come to the conclusion that the accident occurred due to the rider of the two wheeler and fastened the entire negligence on the part of the driver of the two wheeler. Which in the opinion of the Court is not appropriate and the same is liable to be set aside and accordingly, set aside.

12.On the other hand, this Court based on Ext.P1, FIR and the final report filed by the police has safely come to a conclusion that the cause for the accident is due the negligence on the part of the driver of the bus and ultimately, fastens the entire liability against the driver of the Transport Corporation. Accordingly, the liability is fixed against the driver of the bus. Since the vehicle is insured, ultimately the insurance company is liable to pay the compensation.

13.As regards the quantum of compensation, the Tribunal has



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awarded a sum of Rs.25,000/- under no fault liability, which is not appropriate, since this Court has fastened the negligence and liability on the part of the driver of the bus and therefore, it is necessary to redetermine the compensation.

14. In the present case, the nature of injury sustained by the appellant is head injury and the medical board assessed the disability of the appellant at 60%. At the time of arguments, this Court is of the view that the claimant had sustained severe head injuries and hence, this Court had almost come to the conclusion to consider the entire 60% of disability for awarding compensation. Accordingly, to ascertain the present status, this Court directed the claimant to appear in person before this Court.

15. Pursuant to the direction of this Court, the claimant appeared before this Court and this Court enquired about his avocation and health status, for which he replied that he is attending the occasional works and earning. Further, this Court finds that though he sustained 60% disability, having sustained head injury, by appearance, he appears to be quite alright and in such circumstances, this Court is inclined to take 25% as disability



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and award compensation by applying percentage method. Accordingly, the disability would be calculated as follows:

$$\text{Rs.6,000/- (amount per percentage)} * 25\% (\text{disability}) = \text{Rs.1,50,000/-}$$

16.By considering the nature of injury sustained by the Appellant, this Court also awards the following compensation, in entirety;

Sl. No	Description	Amount awarded by this Court (Rs)
1.	Loss of Income	1,50,000
2.	Pain and Sufferings	5,000
3.	Extra Nourishment	5,000
4.	Loss of Amenities	5,000
5.	Damage to clothes	2,000
6.	Transportation charges	10,000
	Total	1,77,000

17.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.25,000/- is hereby enhanced to Rs.1,77,000/- together with interest at the rate of 7.5% per annum from the



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date of petition till the date of deposit. The 2nd respondent-Transport Corporation is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment to the credit of **M.C.O.P.No. 16 of 2019** on the file of the Exclusive Motor Accidents Claims Tribunal, Tirupur. On such deposit being made, the Tribunal is directed to transfer the Award amount, directly to the Bank account of the Appellant/Claimant through RTGS, within a period of **three weeks**. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest.

18. Accordingly, the Civil Miscellaneous Petition is allowed. No costs.

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Tsg/nsa

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To

- 1.Exclusive Motor Accident Claims Tribunal,
Tirupur.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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KRISHNAN RAMASAMY, J.,

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