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CMA NO.2084 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25 / 06 / 2024

JUDGMENT DELIVERED ON : 12 / 08 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.2084 OF 2022

M.Magesh

... Appellant /
Petitioner

Vs.

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram Division Ltd.,
No.3/137, Salamedu, Vazhuthareddy,
Villupuram Taluk & District.

... Respondent /
Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 14.10.2019 passed in M.C.O.P.No.24 of 2014 by the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Chengalpattu.

For Appellant : Ms.RA.Srividhya

For Respondent : Ms.S.Shanthakumari



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J U D G M E N T

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This Civil Miscellaneous Appeal is directed against the Award dated October 14, 2019 passed by 'the Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Chengalpattu' (henceforth 'Tribunal') in M.C.O.P.No.24 of 2014.

Petitioner's case

2.The case of the petitioner is that on April 22, 2012 at 16.30 hours, he was travelling as a pillion rider in Motorcycle bearing Registration No.TN-21-AV-1017 from Chengalpattu Medical College Ground to Chengalpattu, in Grand Southern Trunk (GST) Road. While nearing Chengalpattu Combined Courts Building, a Bus bearing Registration No.TN-32-N-1986, belonging to the respondent, driven by its Driver in a rash and negligent manner from the opposite direction, collided with the Motorcycle and caused an accident. In the accident, the rider of the Motorcycle died and the petitioner along with one another, sustained grievous injuries. At the time of accident, the petitioner was working as a Machine Operator and earned a sum of Rs.5,000/- apart from other



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emoluments and bonus. Accordingly, the petitioner filed a Motor Accident

Claim Original Petition claiming compensation of a sum of Rs.15,00,000/-

(Rupees Fifteen Lakhs Only) before the Tribunal.

Respondent's case

3.The respondent filed a counter wherein it has been stated that the accident occurred due to the rash and negligent riding of the rider of the Motorcycle bearing Registration No.TN-21-AV-1017, that too, without wearing Helmet. It is the rider who dashed against the Bus. Further, three persons were travelling in the Motorcycle which is against the traffic rules. In short, it the rider who was negligent. Accordingly, the respondent prayed to dismiss the original petition.

4.At trial, on the side of the petitioner, the petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.14 were marked. On the side of the respondent, though the Conductor of the respondent's Bus was examined as R.W.1, no documents were marked. Disability Certificate issued by the Medical Board to the petitioner was marked as Ex-C.1.



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Findings of the Tribunal

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5. Upon hearing both sides and considering the materials available on record, the Tribunal came to the conclusion that the Driver of the respondent's Bus and the rider of the Motorcycle equally contributed to the accident. Accordingly, the Tribunal fastened liability on both, the rider of the Motorcycle and the Driver of the respondent's Bus in the ratio of 50:50 and awarded 50% of the total compensation of Rs.6,16,900/- which is Rs.3,08,450/-.

6. Dissatisfied with the Award, the petitioner / claimant has preferred this Civil Miscellaneous Appeal.

Arguments

7. The learned counsel for the appellant/petitioner has submitted that mere travelling of three persons in a Motorcycle would not amount to contributory negligence; that the Tribunal, without any evidence and materials presumed that the rider of the Motorcycle equally contributed the accident; that the respondent's Driver who is the competent



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person to depose about the manner of accident was not examined and no reason was assigned for his non-examination. Under such circumstances, the Tribunal is not right in holding that the rider of the Motorcycle also contributed to the accident. She further submitted that the petitioner sustained head injury as well as various fractures and due to the same, he is not able to perform his work as he used to before the accident. Accordingly, she prayed to allow the Civil Miscellaneous Appeal, fasten the liability completely on the driver of the respondent's Bus and enhance the compensation.

8. Per contra, learned counsel for the respondent / Transport Corporation contended that the amount of compensation claimed by the petitioner / claimant is excessive and exorbitant. She also denied the age, occupation and income of the petitioner / claimant and accordingly, sought to dismiss the Civil Miscellaneous Appeal.

Discussion and Decision

9. This Court has considered the rival submissions.



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10. Admittedly, First Information Report was registered against the Driver of the respondent. The petitioner, who is an injured, was examined as P.W.1. He has deposed that only due to the rash and negligent driving of the respondent's Driver, the accident had occurred. The Conductor of the respondent's Bus was examined as R.W.1. He deposed that the accident occurred due to the rash and negligent riding of the rider of the Motorcycle bearing Registration No. TN-21-AV-1017. He has further deposed that he was distributing tickets at the time of accident. In such a scenario, he could not have had a good chance of witnessing the accident.

11. Considering the facts and circumstances of the case, this Court is of the view that the Driver of the respondent's Bus is the competent person to speak about the manner of accident. An FIR had been registered and criminal case proceeding was going on against the Driver of the respondent. In such circumstances, the respondent ought to have examined its Driver. However, he was not examined in this case and no reason was assigned for non-examination of the respondent's Driver.

12. Contributory negligence is a question of fact to be decided



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based on the evidence. It has to be proved as any other fact. It cannot be presumed or assumed based on extraneous materials. A person, who is competent to speak about the manner of accident, has not been examined in this case. In these circumstances, there is no reason to disbelieve the evidence of P.W.1. Further, merely because three persons travelled in a Motorcycle, this Court cannot presume that the rider of the Motorcycle contributed to the accident.

13. At this juncture, it is opposite to cite the judgment of the Hon'ble Apex Court in ***Mohammed Siddique and Another Vs. National Insurance Company Limited and Others [2020 (3) SCC 57]*** wherein, it has been observed as hereunder:

“12. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and



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pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim...”

14. In view of the facts and circumstances of this case and on the strength of ***Mohammed Siddique (supra)***, this Court is of the considered view that the Tribunal has grossly erred in concluding that the rider of the Motorcycle equally contributed to the accident. Hence, the said finding of the Tribunal is liable to be set aside.

15. As far as the quantum of compensation is concerned, the petitioner examined himself as P.W.1 and deposed that he earned a sum of Rs.5,000/- per month apart from other emoluments and bonus. However, no documentary evidence was adduced by the petitioner before the Tribunal to substantiate his claim. Further, he has not quantified the alleged bonus and other emoluments. To be noted, in the year 2012, a Machine Operator or even any other semi-skilled labour could have easily



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earned a sum of Rs.5,000/- per month. Hence, this Court is of the view that the Tribunal has rightly taken the income at Rs.5,000/-.

16.The petitioner suffered 40% disability and the petitioner has produced Ex-C.1 (Disability Certificate) in this regard. However, the Medical Board has not assigned any reason for arriving at such percentage of disability. The Tribunal upon seeing the physical condition of the petitioner and the nature of the injuries found on the body of the petitioner, has come to the conclusion that the petitioner suffered only 30% disability. There is no reason to reject the said conclusion arrived at by the Tribunal. Accordingly, this Court decides that the petitioner suffered 30% permanent disability.

17.However, the 50% liability fastened on the rider of the Motorcycle is hereby set aside and complete liability is fastened on the Driver of the respondent's Bus for reasons alluded to *supra*. Accordingly, this Court confirms the compensation awarded by the Tribunal as hereunder:

<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
	Pecuniary Damages	



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<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1	Expenses relating to treatment, hospitalization and medicines	Rs.1,02,291.00
2	Expenses towards conveyance	Rs.10,000.00
3	Extra Nourishment	Rs.5,000.00
4	Attender charges	Rs.5,000.00
5	Damages to clothing and articles	Rs.1,000.00
6	Compensation for the loss of future earning capacity and for disability	Rs.4,53,600.00
	Non-pecuniary Damages	
1	Compensation for pain and suffering	Rs.20,000.00
2	Compensation for loss of future amenities	Rs.20,000.00
	Total	Rs.6,16,891.00
	Rounded off	Rs.6,16,900.00

18. Accordingly, the total compensation payable is **Rs.6,16,900/- (Rupees Six Lakh Sixteen Thousand Nine Hundred Only)**. Since the 50 % liability fastened on the rider of the Motorcycle is set aside, this Court directs the respondent/Transport Corporation to pay the entire compensation to the petitioner within a period of eight weeks (8) from the date of receipt of a copy of this Judgment. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

19. In fine, the Civil Miscellaneous Appeal is allowed. No



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costs.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

The Chief Judicial Magistrate /
Motor Accidents Claims Tribunal
Chengalpattu.



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R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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