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C.M.A.Nos.1937 & 1810 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.Nos. 1937 & 1810 of 2022

and

C.M.P.No. 13027 of 2022

C.M.A.No. 1937 of 2022

T.Venkateswaran

...Appellant

Vs.

1.P.Velmurugan

2.The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
12, Ramakrishna Road, Salem - 636 007.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order in MCOP.No. 380 of 2013 dated 20.10.2021 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Sankari.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.D.Nitin for R2

R1 - Served - No appearance



C.M.A.No. 1810 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
12, Ramakrishna Road, Salem - 636 007.

...Appellant

Vs.

1.T.Venkateshwaran

2.P.Velmurugan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order in MCOP.No. 380 of 2013 dated 20.10.2021 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Sankari.

For Appellant : Mr.D.Nitin

For Respondents : Mr.T.S.Arthanareeswaran for R1
R2 - Served - No appearance

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Both the Corporation as well as the claimant are on appeal, challenging the award of a sum of Rs.18,85,007/- as compensation for the permanent disability caused to the claimant in a motor accident that occurred on 12.02.2013.



2.The claimant sought for a compensation of Rs.41,00,000/- contending that while he was driving Tata Ace medium goods vehicle on the Chekkumedu - Puthuplayam road proceeding towards Puthupalayam, the bus belonging to the 2nd respondent / Corporation driven by the 1st respondent in a rash and negligent manner came in the opposite direction and dashed against the medium goods vehicle, causing injuries to the claimant. Contending that the injuries caused namely, fracture in the right leg, right hand and right hip had resulted in permanent disability thereby, rendering him unable to continue his avocation namely, driver, the claimant sought for a compensation of Rs.41,00,000/-.

3. The claim was resisted by the Corporation contending that there was no negligence on the part of the driver of the bus and the accident having occurred in the middle of the road, the accident happened only due to the rash and negligent driving of the driver of the medium goods vehicle namely, the claimant. The quantum of compensation was also termed as excessive.



4. At trial, the claimant was examined as P.W.1 and one Muthusamy, an eye-witness was examined as P.W.2 on the side of the petitioner. Exs.A1 to A21 were marked. The bus driver and one Rajendran, Sub-Inspector of Police, Edappadi was examined as R.W.1 & R.W.2 and Exs.R1 to R10 were marked. While it was the contention of the Corporation that the driver of the Tata Ace vehicle alone was responsible for the accident, the claimant would contend that it was the negligence on the part of the bus driver which caused the accident. The claimant would rely upon the First Information Report and evidence of P.W.2, the alleged eye-witness to prove his contentions and the respondent Corporation would rely upon the evidence of R.W.1 / the driver and a final report filed in the criminal case and the closure of the criminal case as a mistake of fact which are marked as Exs.R4 & R10 respectively.

5. The Tribunal, on a consideration of the evidence held that both the vehicles have contributed certain extent to that accident and it apportioned contributory negligence at 80% on the bus and 20% on the claimant. On the quantum, the Tribunal, based on the medical certificate issued by the Medical Board arrived at the functional disability at 55%. It also found that



since the avocation of the claimant was that of a driver, he cannot carry on his avocation as he was doing earlier. It therefore, adopted multiplier method and arrived at the loss of earning capacity at Rs.11,22,000/-. It also granted a sum of Rs.2,00,000/- for pain and suffering, Rs.9,64,259/- towards medical expenses, Rs.25,000/- each towards nutrition and transportation and Rs.20,000/- towards assistance. Thus, the total compensation worked out to Rs.23,56,259/-. Aggrieved, both the claimant as well as the Corporation are on appeal.

6. We have heard Mr.D.Nitin, learned counsel appearing for the Corporation and Mr.T.S.Arthanareeswaran, learned counsel for the claimant.

7. While Mr.D.Nitin, learned counsel for the Corporation would vehemently contend the fact that criminal case was closed as mistake of fact, combined with the rough sketch that was filed as Ex.R3 would show that there was no fault on the part of the driver of the bus. The Tribunal has assessed the evidence of P.W.2, the contents of the First Information Report as well as the order of the Criminal Court made in C.C.No.109 of 2013 and has come to the conclusion that the accident was contributed largely due to



the negligence on the part of the bus therefore, fastened the liability of 80% on the driver of the bus and 20% on the driver of the medium goods vehicle.

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8. Though Mr.D.Nitin would vehemently contend that from the fact that the claimant has not produced motor vehicle report of his vehicle, we should presume that the accident had occurred due to his negligence. He would also draw our attention to the Ex.R3 / the plan and attempt to convince us that it was the driver of the Tata Ace vehicle namely, claimant who had contributed to the accident in a major way.

9. Contending contra, Mr.T.S.Arthanareeswaran, learned counsel for the respondent / claimant would submit that as per the First Information Report and the eye-witness, the accident occurred only due to the negligence on the part of the driver of the bus and it cannot be said, the accident occurred due to the carelessness or negligence of the driver of the medium goods vehicle/ the claimant. We have heard the rival submissions.

10. The First Information Report was filed against the driver of the bus. P.W.2, an eye-witness has been examined. His evidence has not been



shaken in any manner. If we are to go by his evidence, entire negligence should be fastened on the part of the driver of the bus but, at the same time, if Ex.R3 is taken into account, the scene of occurrence and the manner in which the accident took place, we will have to necessarily conclude that both the drivers were negligent to a certain extent and contributed to the accident. The Tribunal had taken note of the damages that were caused to the bus, particularly on the right side of the bus to come to the conclusion that the percentage of negligence on the part of the bus driver is more and not that of the driver of the Tata Ace vehicle.

11. Even though the criminal proceedings were closed, the same are not binding on the Tribunal and the Tribunal can decide the matter independent of the conclusion of the criminal Court. The Tribunal has done that and upon analysis of the evidence of P.W.2, coupled with the contents of the First Information Report, it has come to the conclusion that the major contribution for the accident was by the driver of the bus and was fixed quantum at 80%. We do not see any reason to interfere with the order of the Tribunal on this issue.



12. On the quantum also, we find that the Tribunal has assumed very reasonable sum of Rs.10,000/- as monthly income and has calculated the loss of earning capacity. The extent of disability as per the Medical Board's opinion is 55%. The Tribunal has not however, taken into account future prospects. If the future prospects are taken into account, the total loss of earning capacity would be $\text{Rs.14,000} \times 12 \times 17 = \text{Rs.28,56,000/-}$ and 55% of it would be Rs.15,70,800/-. The compensation awarded on the other heads does not appear to be very high. We therefore, confirmed the compensation awarded under the other heads.

13. The compensation awarded on the loss of earning capacity alone is enhanced to Rs.15,70,800/-. The total compensation would be Rs.28,05,059/-. If we deduct 20% of it towards contributory negligence, the compensation payable would be Rs.22,44,047/-.

14. In view of the above, the appeal filed by the Corporation namely, C.M.A.No.1810 of 2022 is dismissed and the appeal filed by the claimant namely, C.M.A.No.1937 of 2022 is allowed partly. The Corporation has also deposited 50% of the amount as awarded by the Tribunal. The



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Corporation will deposit the balance amount with 7.5% interest from the date of petition till date of deposit within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
23.07.2024

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Internet:Yes

Index: No

Speaking

Nuetral Citation : No

To:-

The Motor Accident Claims Tribunal,
Sub-Court,
Sankari.



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and
R.SAKTHIVEL, J.

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