



C.M.A.No.2484 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.2484 of 2022
and
CMP.No.19376 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
Salem Division,
No.12, Ramakrishna Road,
Salem - 636 007

...Appellant

Vs.

Manikandan,
S/o Venkatesan @ venkatachalam

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP.No.1121/2020 passed by Motor Accidents Claims Tribunal, Special Subordinate Court-1, Salem dated 04.08.2022.



C.M.A.No.2484 of 2022

For Appellant : Mr.D.Nitin

For Respondents : Mr.R.Ruban chakravarthi
for Mr.S.Kaithamalai Kumaran

JUDGMENT

(Judgment of the Court was delivered by J. Nisha Banu, J)

This Civil Miscellaneous Appeal has been filed by the TamilNadu State Transport Corporation, challenging the order dated 04.08.2022 made in MCOP.No.1121 of 2020 on the file of Motor Accident Claims Tribunal, Special Subordinate Court No.1, Salem, by which, a sum of Rs.23,03,000/- was granted as compensation to the respondent/ injured claimant.

2. (i) The case of the claimant in the claim petition is that on 16.09.2020 at 12.45 p.m. the claimant was riding his motor cycle bearing No.TN-29-BS-5551 near Government School at Adimalai Pudhur on Salem to Harur main Road. At that time, the appellant Transport bus bearing No.TN-30-N-1921 came from opposite side in a rash and negligent manner and hit the claimant's motor cycle directly. Due to which, the claimant was thrown out of motor cycle and sustained severe fracture of Rt Leg and multiple injuries all over the body and his Rt leg



C.M.A.No.2484 of 2022

WEB COPY

was detached below knee level at the spot itself. Immediately, he was taken to Salem Government Hospital for treatment and still he is undergoing treatment and he has spent more than Rs.1,00,000/- for medical expenses.

(ii) The claimant is only 28 years old. At the time of accident, he was earning a sum of Rs.20,000/- per month by his profession. After the accident, he has got permanent disability and now, he is not able to attend his work and also suffering to lead his life. Since the accident occurred due to the negligent act of the Transport Corporation bus driver, the Veeranam police registered a criminal case against him under Crime No.878/2020. The injured claimed a compensation of Rs.40,00,000/- from the State Transport Corporation.

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 State Transport Corporation bus and awarded a sum of Rs.23,03,000/- as compensation to the claimant and as the State Transport Corporation was directed to pay the award amount to the claimant/respondent.



C.M.A.No.2484 of 2022

WEB COPY

4. Challenging the said award dated 04.08.2022 made in M.C.O.P.No.1121 of 2020, the appellant-Transport Corporation has come out with the present appeal.

5. (i) The learned counsel for the appellant submitted that the Tribunal, based on the version of the injured, registered the FIR and came to the conclusion and that it was the State Transport Corporation bus which came in high speed and dashed against motor bike of the claimant. As a consequence, his right leg was cut and he was shifted by ambulance to hospital. The mother of the injured lodged FIR. However, P.W.1 admitted in the cross examination that his right leg was bandaged at the time of accident and Accident Register copy was not filed. The driver of the bus had also deposed that the motorist who came in the opposite direction had kept his legs resting on bumper and came in over speed and on seeing the motorist, he horned and stopped his bus on the left side of the road. P.W.1, unable to control the speed and unable to balance his two wheeler with his right legs already bandaged, dashed and fell down and thus, the accident had occurred. Merely based on the FIR,



C.M.A.No.2484 of 2022

WEB COPY

without final report or charge sheet, the negligence was fastened on the appellant Transport Corporation driver. The Tribunal invoked preponderance of probabilities. If the charge sheet was laid, the Tribunal would have found that the FIR is a mistake of fact. Further, the doctor was not examined as to the previous injuries sustained by PW1.

(ii) Learned counsel for the appellant would further state that the Tribunal ought not to have arrived at Rs.10,000/- as notional income. He would further state that 75% functional disability is not supported by any oral evidence by any expert. He would further state that adding 40% towards future prospects to Rs.10,000/- notional income and applying multiplier as 17, is erroneous. Further, the amount awarded by the Tribunal i.e., Rs.60,000/- towards pain and sufferings, Rs.40,000 towards extra nourishment and Rs.20,000/- towards attendant charges are all excessive. Thus, the Tribunal erred both on negligence and quantum and failed to appreciate the case of both parties in entirety. Hence, he would pray to set aside the order passed by the Tribunal.

6. (i) Per contra, the learned counsel for the claimant would state that the injured was having valid license at the time of accident. Further,



C.M.A.No.2484 of 2022

though PW.1 admitted that his leg was bandaged at the time of accident, however, he denied the allegation that during the time of accident, he was riding the two wheeler by keeping his legs over the bumper and hence, lost control and caused the accident. Further, the accident had occurred at 12.20 p.m. and the complaint was lodged at 7.00 p.m. Ex.P1 FIR clearly reveals that it was the driver of the State Transport Corporation bus who drove the bus in a rash and negligent manner and caused the accident.

(ii) Learned counsel would further state that the claimant was working as loadman and though the claimant had claimed that he was earning Rs.20,000/- per month, the Tribunal had arrived at Rs.10,000/- only as notional income for fixing the compensation. The learned counsel would further state that the claimant had spent more than Rs.1 lakh for medical expenses. Therefore, the amount awarded by the Tribunal under various heads are reasonable. Hence, he would pray to dismiss the appeal.

7. Heard the learned counsel for the appellant Transport Corporation as well as the learned counsel for the respondent/claimant



C.M.A.No.2484 of 2022

and perused the materials available on record.

WEB COPY

8. The appellant Transport Corporation has filed this appeal questioning the negligence and quantum of the award passed by the Tribunal.

9. Insofar as negligence is concerned, the Tribunal relied on Ex.P1 FIR and also the evidence of P.W.1 - injured which would go to show that at the time of accident the injured was having valid license and that it was the State Transport Bus which came in a rash and negligent manner and dashed against his two wheeler, due to which, he sustained grievous injuries and right leg fracture. Even in the cross examination of RW1- driver of the bus had accepted that FIR has been registered against him for rash and negligent driving of the Transport bus driven by him. Further, RW1/driver of the Transport Corporation, in his evidence, had stated that no complaint was given by him as against the motorist/injured. It is also seen from the records that no evidence was examined on the side of the Transport Corporation to disprove the evidence of P.W.1/injured. Thus, considering the oral and documentary evidence, the Tribunal had



C.M.A.No.2484 of 2022

WEB COPY

come to the conclusion that the accident took place only due to rash and negligence on the part of the driver of the appellant Transport Corporation and we find no infirmity in the said findings and thus, we are not inclined to interfere with the same.

10. As far as the quantum awarded by the Tribunal is concerned, it is seen from the claim petition that the injured was working as loadman and was earning a sum of Rs.20,000/-. Due to the accident, his right leg got fracture and cut and as per Ex.C1, there is 75% functional disability. Therefore, the injured could not do the work of loadman and lost his earning capacity and also suffering to lead his life. Though the injured had claimed Rs.20,000/- per month as loss of income, the Tribunal had fixed Rs.10,000/- as notional income, which in our opinion, is fair and reasonable. Further, the amount awarded under other heads viz., loss of amenities, extra nourishment, pain and sufferings, attendant charge, loss of belongings etc. are just and reasonable. We do not find any infirmity or illegality in the said findings of the Tribunal, warranting interference by this Court. Therefore, we are of the opinion that the award passed by the Tribunal has to be confirmed.



C.M.A.No.2484 of 2022

WEB COPY

11. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.23,03,000/- awarded by the Tribunal as compensation to the respondent, along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the entire amount awarded by the Tribunal along with interest and cost, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent is permitted to withdraw the deposit amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B, J.) (R.S.V., J.)
18.11.2024

Index: Yes/No
Speaking/Non-speaking order
vsi

To
The Motor Accident Claims Tribunal,
Special Subordinate Court-1,
Salem

J. NISHA BANU, J.



WEB COPY



C.M.A.No.2484 of 2022

and
R. SAKTHIVEL, J.

vsi

C.M.A.No.2484 of 2022

18.11.2024