



C.M.A.(MD).No.302 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.07.2024

DELIVERED ON : 25.09.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.302 of 2021
and C.M.P.(MD).No.2487 of 2021

The Tamil Nadu State Transport Corporation,
Through its
The Managing Director,
Virudhungan,
Virudhunagar District.

... Appellant/Respondent

Vs.

G.Muthusamy

... Respondent/Petitioner

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree in M.C.O.P.No.98 of 2012 dated 11.10.2018 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Srivilliputtur.

For Appellant : Mr.K.Sudalayandi

For Respondent : No Appearance



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JUDGMENT

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This appeal has been filed against the Judgment and Decree in M.C.O.P.No.98 of 2012 dated 11.10.2018 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Srivilliputtur.

2.The facts in brief:

On 02.03.2021 at about 8.35 p.m., some persons were travelling in the appellant's vehicle bearing registration No.TN 67 N 0687 to Srivilliputhur Bus Stand to go to Sivakasi, The petitioner sitting on the fourth seat. At the time another vehicle, which came in the opposite direction hit the vehicle in the side way and fled away without stopping. In the hit, the claimant suffered injury below his right hand elbow region. He underwent surgery. So claiming compensation amount of Rs.7,00,000/- the claim application was filed.

3.That was resisted by the appellant herein by filing counter stating that a criminal case was registered against the van driver. Since the accident took place because of the rash and negligent driving on the part of the another vehicle, the claim petition will not lie.



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4.Regarding the first aspect, the Tribunal recorded a finding that the claimant is entitled to claim compensation on the principle of no fault liability. In a case of composite negligence the claimant can proceed against any one of the tortfeasors. So the claim petition will lie fastening liability upon the appellant herein to pay the compensation and recover the same from the offending vehicle.

5.Regarding the compensation, the disability was assessed at 48% and proceeded to assess the compensation, taking the same as functional disability as 50%. The Notional income was fixed at Rs.4,500/-. The age was taken as 49. 13 was taken as multiplier. 25% was taken as future income and finally, it awarded the loss of income as Rs.6,33,750/-. To that other customary amounts were added and finally arrived Rs.9,60,987/-.

6.Against which, this appeal is preferred by the appellant.

7.It is the specific case of the respondent herein that when he was



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travelling in the vehicle namely bus belongs to the appellant, an unidentified van, which came in the opposite direction, hit to the side portion of the bus and fled away without stopping. Because of that he sustained injuries. When no case is made out against the appellant driver for negligence, the Tribunal thought it fit to direct this appellant, to pay the entire compensation and recover the same from the unknown vehicle. This Court is completely at loss to understand the reason of the trial Court. In case of composite negligence only such sort of course is available. But, when the appellant's driver was not responsible for the accident, admittedly, then the appellant cannot be fastened with any liability. Since it has been stated that unknown vehicle was the reason for the injury, then, the respondent herein has to approach only the concerned authority.

8. On coming to know about the reality, learned counsel for the respondent / claimant herein would submit that liberty may be granted to the petitioner to approach the competent authority to claim compensation amount under the provision of the hit and run scheme.



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9. In view of the above said submission made by the learned counsel for the respondent / claimant, the award passed by the Tribunal is set aside and liberty is granted to the first respondent herein to approach the competent authority under the hit and run scheme. It is made clear that the competent authority may deduct the days spent by the first respondent herein in prosecuting the main claim application from the date of petition till the date of dismissal of this appeal, while counting the period of limitation for presenting the application.

10. Section 161 of Motor Vehicles Act is amended providing a scheme for disbursement of compensation amount not less than Rs.2 Lakhs. No time limit is fixed for making the claim before the Claim Forum. The judgment of the Hon'ble Supreme Court in a recent judgment in the case of **S.Rajaseekaran Vs Union of India and Others**, in **I.A.No.71387 of 2023 in Writ Petition(C)No.295 of 2012**, has been clarified by the Hon'ble Supreme Court that in the scheme framed in 2022, no specific limitation period was prescribed.

11. Whatever it may be, now in view of the above said



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development, since the period is pertaining to 2012, as noted above, the period spent in prosecuting the matter may be ignored by the competent authority.

12. With the above said liberty, this Civil Miscellaneous Appeal stands allowed and the award passed in M.C.O.P.No.98 of 2012 dated 11.10.2018 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Srivilliputtur, is set aside. No costs. Consequently, connected miscellaneous petition stands closed.

25.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal Sub Judge, Motor Accident Claims Tribunal, Srivilliputtur.

2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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