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CMA.(MD)No.92 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/06/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No.92 of 2021

and

CMP (MD) No.850 of 2021

State Express Transport Corporation Limited,
through its Managing Director
Office at Tiruvallur House,
Pallavan Street,
Chennai.

: Appellant/Respondent

Vs.

Manikandan

: Respondent/Claimant

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the impugned award passed in MCOP No.1158 of 2015, dated 17/07/2019 on the file of the MACT (Special Sub Court), Tirunelveli and pass any other order.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed seeking an order to set aside the award, dated 17/07/2019 passed in MCOP No.1158 of 2015 by the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli.



WEB COPY



CMA.(MD)No.92 of 2021

2. The facts in brief:-

On 31/05/2015 at about 05.15 am, the petitioner was driving his Auto bearing registration No.TN-72-BA-0842 at Vallanadu Bazaar Junction on the Tirunelveli-Tuticorin main road. At that time, a Bus bearing registration No.TN-01-N-9813 came from the western direction in a high speed and hit the Auto. As a result of which, he sustained multiple injuries all over his body, taken to the Tirunelveli Medical College Hospital at Palayamkottai and was inpatient for 10 days.

3.Over the occurrence, a case in Crime No.166 of 2018 was registered against the first respondent vehicle driver by the Murappanadu Police Station. Because of the accident, the petitioner could not continue his work as before. Being an Auto driver, he suffered income loss because of his disability. Seeking compensation of Rs.5,00,000/-, he filed the claim petition.

4.That was resisted by the appellant herein by filing a counter stating that only because of the rash and negligent riding on the part of the petitioner, the occurrence took place; He was not having proper driving licence.



5.Before the Tribunal, on the side of the claimant, 4 witnesses were examined and 12 documents marked. On the side of the Appellant Transport Corporation, no witness was examined and one document was marked.

6.At the conclusion of the enquiry, the Tribunal found that the occurrence took place because of the rash and negligent driving on the part of the appellant Transport Corporation Bus driver and fixed the responsibility upon the appellant for compensation.

7.Regarding the compensation, partial permanent disability was assessed at 54.4% and by adopting percentage method, Rs.4,000/- for one percentage was awarded, as noted below in the tabulation.

S.No.	Heads	Calculation
01.	Disability at Rs.4,000/- x 54.4%	Rs.2,17,600/-
02.	Medical Expenses as per Ex.P2	Rs.1,87,000/-
03.	Attendance Charges	Rs. 5,000/-
04.	Pain and Suffering	Rs. 15,000/-
05.	Transport to Hospital	Rs. 5,000/-
06.	Extra Nourishment	Rs. 15,000/-
07.	Loss of convenience	Rs. 15,000/-
08.	Temporary loss of income	Rs. 25,000/-
	Total compensation awarded	Rs.4,84,600/-

8.The medical expenses were granted on the basis of the medical bills under Ex.P2.



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9.Challenging the same, this appeal is preferred by the appellant contending that the petitioner drove the vehicle in a rash and negligent manner came in the wrong direction on the right side and tried to turn further right. In that process, the occurrence has taken place, for which the appellant vehicle cannot be held responsible.

10.Now let us go to the evidence on record.

11.The appellant driver was examined as RW1. He has stated that the petitioner was driving his Auto in front him. So it is seen that it is hit behind. There is no evidence on record to show that the petitioner tried to cross the road suddenly without making any signal or indication. When it is a case of hit behind, naturally it has to be presumed that only the appellant driver was the rash and negligent. So, the findings recorded by the Tribunal on that aspect, requires no interference and accordingly, it is confirmed.

12.Regarding the quantum, it is submitted by the appellant that taking of Rs.4,000/- for one percentage disability is on the higher side and it must be reduced to Rs.3,000/-.



CMA.(MD)No.92 of 2021

WEB COPY

13. Adopting the percentage multiplier is always a guess work. Taking into account the nature of the injuries suffered, age, disability and the avocation of the injured, as mentioned above, Rs.4,000/- was taken. There was fracture on the right scapula region. It mal united. Similarly, the left scapula region mal united. There was radial nerve injury. Because of the injuries, the movement of the wrist and finger areas also restricted.

14. It appears that the multiple fracture was suffered by the injured. When there is malunion, actual functioning will reduce. Taking Rs.4,000/- for one percentage for awarding compensation cannot be considered to be on the higher side. So, the amount as noted above has been reasonably fixed by the Tribunal. I find no reason to interfere into that award.

15. In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

14/06/2024

Index: Yes/No
Internet: Yes/No
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CMA.(MD)No.92 of 2021

To,

1.The Motor Accident Claims Tribunal,
Special Sub Court,
Tirunelveli.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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