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C.M.A(MD)Nos.633 and 81 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A(MD)Nos.81 and 633 of 2023
and
C.M.P(MD)No.923 of 2023

C.M.A(MD)No.81 of 2023

The Managing Director,
State Express Transport Corporation Ltd.,
Thiruvalluvar House,
Pallavan Salai,
Chennai – 600 002.

... Appellant

Vs.

Premkumar

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal, set aside the award made in M.C.O.P.No.1357 of 2014 dated 22.04.2022 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Tirunelveli.

For Appellant : Mr.P.Prabhakaran

For Respondent : Mr.T.Selvakumaran



C.M.A(MD)Nos.633 and 81 of 2023

C.M.A(MD)No.633 of 2023

Premkumar

... Appellant

Vs.

The Managing Director,
State Express Transport Corporation Ltd.,
Thiruvalluvar House,
Pallavan Salai,
Chennai – 600 002.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal, enhance the award amount in M.C.O.P.No.1357 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Tirunelveli, dated 22.04.2022.

For Appellant : Mr.T.Selvakumaran

For Respondent : Mr.P.Prabhakaran

COMMON JUDGMENT

These Civil Miscellaneous Appeals are preferred against the award dated 22.04.2022 passed in M.C.O.P.No.1357 of 2014 by the Motor Accident Claims Tribunal/Special Sub Judge, Tiruenveli.

2. The petitioner and the respondent in M.C.O.P.No.1357 of 2014 have filed the respective appeals.



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3. The petitioner/claimant filed the claim petition in M.C.O.P.No. 1357 of 2014 on the file of the MACT/Special Sub Judge, Tirunelveli.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 1357 of 2014 is adopted hereunder.

5. The brief facts of the case:

On 26.02.2014 at about 4.00 p.m. the petitioner was riding his motorcycle bearing registration No.TN 76 V 7323 on Anna Fly Over at Tirunelveli junction and stopped his vehicle on seeing signal. At that time, the respondent's bus bearing registration number TN 01 N 9541 was driven by its driver in a rash and negligent manner hit against the petitioner and pillion rider since deceased. Due to impact, the petitioner sustained injuries and took treatment in private hospital. Hence, the petitioner filed M.C.O.P.No.1357 of 2014 seeking compensation of Rs.20,00,000/-.

6. The respondent/Transport Corporation objected the claim petition by contending that the petitioner along with his pillion rider came in his two wheeler in a rash and negligent manner and dashed



against the respondent's bus. Therefore, the petitioner is not entitled any claim from the respondent company.

7. Before the Tribunal both side adduced oral and documentary evidence. On the side of petitioner, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.8 were marked. On the side of respondent, R.W.1 and R.W.2 were examined and Ex.R.1 to Ex.R.3 were marked and Ex.C.1 was marked. After hearing both and after considering the evidences, the Tribunal has held that the accident took place due to the rash and negligent driving of the petitioner. However, the Tribunal awarded compensation directing the respondent to pay Rs.1,85,000/- to the petitioner by invoking Section 163(A) of M.V.Act.

8. Aggrieved by the said award, the respondent has preferred the appeal in C.M.A(MD)No.81 of 2023 to set aside the award and the petitioner has preferred the appeal in C.M.A(MD)No.633 of 2023 for enhancement of award amount.

9. Heard both side and perused the records in these Civil Miscellaneous Appeal.



10. The learned counsel appearing for the petitioner submitted that the petitioner's leg was shortened due to the accident, for which, the Tribunal ought to have granted Rs.1,50,000/- under the head of shortening of leg. Further, the Tribunal has not considered the pain and suffering, loss of amenities, expectation of life and attendant charges and ought to have awarded more compensation. Further, the petitioner is an electrician. The petitioner's right leg was shortened 2 cm than its original and thereby the permanent disability is fixed by the doctor at 37%. Because of injuries sustained by him, the petitioner could not able to do his avocation and therefore, the Tribunal ought to have applied multiplier. In support of his argument, the learned counsel for the petitioner relied on the citation of the Hon'ble Supreme Court reported in **2020 (2) TN MAC 303 (SC)**, wherein it is held in paragraph No.7(b) as follows:

“7(b). Loss of earning capacity of the appellant with Permanent Disability of 31.1%.....

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:



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- (i) Pain, suffering and trauma resulting from the accident;
- (ii) Loss of income including future income;
- (iii) The inability of the victim to lead a normal life together with its amenities;
- (iv) medical expenses including those that the victim may be required to undertake in future; and
- (v) Loss of expectation of life."

The aforesaid principle has also been emphasized in an earlier judgment, i.e., **Sandeep Khanuja** case (supra) opining that the multiplier method was logically sound and legally well established to quantify the Loss of Income as a result of death or permanent disability suffered in an accident."

11. Per contra, the learned counsel for the respondent argued that the accident took place due to the negligence of the petitioner and the Tribunal has also held that the petitioner was negligent and responsible for the accident. But, the Tribunal erred wrong in passing the award. The petitioner/claimant has filed the claim petition under Sections 140 and 166 of M.V.Act, but the Tribunal erred in converting Section 163(A) of M.V.Act and held that the claimant is entitled to relief under Section 163(A) of M.V.Act, which is not sustainable in law. The Hon'ble



Supreme Court in **2004 ACJ 934 (Deepal Girishbhai Soni And Ors. vs United India Insurance Co. Ltd.,)** frowned on the practice of converting an application under Section 166 of M.V.Act to an application under Section 163A of M.V.Act, after finding that rash and negligent driving had not been established by the claimant. In support of his argument, the learned counsel for the respondent/Transport Corporation relied on the order in C.M.A.No.3328 of 2017 passed by the Madras High Court. Based on the decision of the Hon'ble Supreme Court, the Principal Seat of Madras High Court held in C.M.A.No.3328 of 2017, dated 17.02.2022 in paragraph No.22 as follows:

“22. This option to so consider an application under section 166 of Motor Vehicles Act, to one under section 163-A of Motor Vehicles Act, 1988 may be exercised before the trial commenced. But, once trial has started and witnesses have grazed the witness box, then it remains an application under section 166 of the Motor Vehicles Act, 1988. The facts asserted have to be proved, failing which the petition is dismissed.”

12. On hearing both and perusal of records, it is clear that the accident took place at the occurrence place. The claimant filed the petition seeking compensation under Sections 166 and 140 of M.V. Act. Both oral and documentary evidences were let in the petition filed under



Sections 166 and 140 of M.V.Act. After considering both side evidence, the Tribunal held that the petitioner/claimant was negligent and responsible for the accident. But, while considering compensation, held that the M.V.Act is a beneficial legislation, the Tribunal granted compensation under Section 163(A) of the Act. This was vehemently attacked by the respondent/Transport Corporation that once the Tribunal held that the petitioner/claimant is negligent and responsible for the accident after let in evidence in the claim petition under Section 166 and 140 of M.V.Act, the claimant is not entitled to any compensation under Section 163-A of the Act and thereby, the Tribunal erred in awarding compensation. In support of his contention, the learned counsel for the respondent/Transport Corporation relied an order passed by the learned Single Judge of Madras High Court in C.M.A.No.3328 of 2017, dated 17.02.2022.

13. On perusal of records, F.I.R. has been registered against the petitioner/claimant and the Tribunal has also held that the accident took place on the negligent act of the petitioner/claimant after considering the evidences let in the petition under Section 166 of M.V.Act. The Tribunal converted Section 166 into 163A of M.V.Act. On perusal of the order passed by the learned Single Judge, it is clearly held that under Section



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166 there is a responsibility to lead evidence, to examine witnesses and if the Tribunal reached the conclusion that the petitioner failed to prove negligent act on the respondent vehicle, the claim petition has to be dismissed. Further, it is held that under Section 163A of M.V.Act, even without discharging burden of establishing negligence a lumpsum amount is granted in accordance with schedule II of the Act. I concur with the decision of the learned Single Judge, which was passed by following the decision of the Hon'ble Supreme Court in **2004 ACJ 934**. On perusal of the order of the Tribunal, it failed to follow the ratio decidendi. Therefore, the petitioner/claimant is not entitled to any compensation, as he was held responsible for the accident as held by the Tribunal. Moreover, the petitioner/claimant has not challenged the decision of the Tribunal. On perusal of the appeal grounds filed by the petitioner/claimant in C.M.A(MD)No.633 of 2023 clearly shows that he filed the appeal only for enhancement of compensation, nowhere he challenged the decision of the Tribunal that the petitioner/claimant was negligent and responsible for the accident in his claim petition U/s.166 of the M.V.Act.

14. On perusal of the citation relied on by the learned counsel for the petitioner/claimant reported in **2020 (2) TN MAC 303 (SC)** is not



applicable to the facts of this case as the appeal filed against the negligent and rash driving of the offending vehicles and thereby the Transport Corporation was directed to pay compensation. Whereas in this case on hand, the petitioner is responsible for the accident in the claim petition filed U/s.166 of the M.V.Act. The Tribunal on its own volition converted the petition U/s.163(A) of M.V.Act, which is against the principle of law as held by the Hon'ble Supreme Court in 2004 ACJ 934 and also by the learned Single Judge of this Court in C.M.A.No.3328 of 2017.

15. In view of the facts and circumstances stated supra, I do concur with the submissions of the learned counsel for the respondent/Transport Corporation and therefore, the compensation awarded by the Tribunal is held incorrect and the same is liable to be set aside.

16. In the result,

(i) The Civil Miscellaneous Appeal in C.M.A(MD) No.81 of 2023 is allowed. The award dated 22.04.2022 passed in M.C.O.P.No.1357 of 2014 by the Motor Accident Claims Tribunal/Special Sub Judge, Tiruenveli is set aside and the claim petition in M.C.O.P.No.1357 of 2014 is dismissed. No costs.



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(ii) If any amount deposited by the appellant/respondent/Transport Corporation in this case either before the Tribunal or before this Court, the same shall be ordered to be withdrawn by the appellant/Transport Corporation on appropriate application.

17. In the result, the Civil Miscellaneous Appeal in C.M.A(MD) No.633 of 2023 is dismissed. No costs.

27.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Motor Accident Claims Tribunal
(Special Sub Judge),
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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