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CMA.No.2376 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

**CMA.No.2376 of 2022
and CMP.No.18496 of 2022**

The Managing Director,
Tamil Nadu State Transport Corporation,
No.12, Ramakrishna Road,
Salem – 7.

... Appellant

Vs.

Kumar

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award dated 08.02.2022 made in MCOP.No.45 of 2018, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge II, Salem.

For Appellant :M/s.D.Nitin

For Respondents :Mr.R.Suresh Kumar

J U D G M E N T



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This appeal has been filed by the Transport Corporation,

aggrieved by the award passed by the Tribunal in MCOP.No.45 of 2018.

2. The respondent herein filed the claim petition seeking compensation of Rs.25,00,000/- for the injury suffered by him in a road accident that had occurred on 19.11.2017. It is the case of the respondent that he was riding a Hero Honda Splendor bike in Salem to Attur National Highways. When he came near Selliamman Nagar bus stop one Devidasan crossed the road suddenly. Even though, the claimant stopped his two wheeler by applying sudden brake the bus belongs to the appellant Corporation came in a rash and negligent manner and hit against the two wheeler of the respondent and said Devidasan. Due to the said impact, the claimant suffered grievous injuries and hence the above claim petition was filed.

3. The claim petition was resisted by the appellant/Transport Corporation on the ground that the accident had occurred only due to the negligence on the part of the claimant.



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4. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the Transport Corporation. The compensation awarded to the claimant was quantified at Rs.20,58,511/-. Aggrieved by the said award, the appellant Corporation has come before this Court.

5. The learned counsel appearing for the appellant would submit that the appellant Corporation examined its driver as RW.1, who deposed that the accident had occurred only due to the negligence on the part of the injured claimant. The Tribunal without proper appreciation of evidence fixed the entire negligence on the part of the driver and hence the same is liable to be set aside. The learned counsel also submitted that Devidasan, who also suffered injury in the very same accident filed Motor Accidents Claims Original Petition, seeking compensation in MCOP.No.236 of 2018 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem and in the said Original Petition a finding was arrived at by the Tribunal that the claimant herein also had contributed to the accident and 50% negligence was fixed on him. Therefore, according to the learned



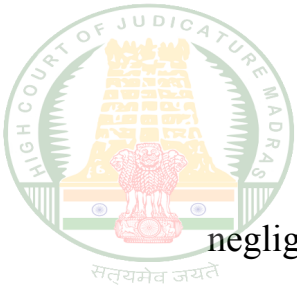
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counsel, 50% negligence is on the claimant.

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6. The learned counsel appearing for the respondent/claimant would submit that the Tribunal based on the evidence of PW.1 and contents of the FIR rightly came to the conclusion that the entire negligence was on the part of the driver of the bus belonged to the appellant corporation and the same was based on proper appreciation of evidence. The learned counsel further submitted that the claimant suffered amputation of left leg below/knee level and he could not continue his avocation. He also submitted that the amount of Rs.8,000/- fixed by the Tribunal towards the notional income is very much on the lower side.

7. In order to prove the negligence aspect, the claimant examined himself as PW.1 and the FIR filed against the driver of the bus has been marked as Ex.P1. The claimant in his evidence deposed that the accident had occurred only due to the negligence on the part of the driver of the bus. The evidence of PW.1 was very well corroborated by FIR marked as Ex.P1. Though the driver of the appellant Corporation, who was examined as RW.1, deposed that the accident had occurred only due to the



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negligence on the part of the claimant, the Tribunal taking into consideration, the admission made by him that he had not taken any steps to quash the criminal case came to the conclusion that the negligence was on the part of the driver of the appellant Corporation. The criminal case was also filed against the driver of the bus. In these circumstances, this Court holds the finding arrived at by the Tribunal that the accident had occurred only due to the negligence on the part of the driver of the bus is based on proper appreciation of evidence available on record and the same requires no interference by this Court.

8. Though it was contended by the learned counsel appearing for the appellant that in the claim petition filed by pedestrian 50% negligence was fixed on the part of the claimant herein, the copy of the said award has not been produced before the Tribunal. The appellant for the reasons best known to him failed to get the certified copy of the said award and mark the same as exhibit before the Tribunal. When the award passed in a claim petition filed by the pedestrian is not before this Court, either by way of exhibits marked before the Tribunal or as an additional evidence in this appeal, this Court is not inclined to entertain the submission made by the



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learned counsel appearing for the appellant, with regard to contributory negligence. Though the copy of the award passed in the claim petition filed by the pedestrian is included in the typed set of papers, this Court is not inclined to consider the same, when it was not marked before the Tribunal or produced before this Court by filing proper application for raising additional evidence. In these circumstances, the submission made by the learned counsel appearing for the appellant cannot be accepted and the findings of the Tribunal with regard to the negligence is confirmed.

9. The learned counsel appearing for the claimant would submit that the notional income of Rs.8,000/- fixed by the Tribunal is very much on the lower side. He has not filed any cross objection seeking enhancement of quantum of compensation. Therefore, this Court is not inclined to interfere with the award passed by the Tribunal on the question of quantum.



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10. In view of discussions made earlier, I do not find any ground to interfere with the findings of the Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.03.2025

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No

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To
1.The Motor Accident Claims Tribunal,
Special Subordinate Judge II, Salem.

2.The Section Officer
VR Section, High Court, Madras.

S.SOUNTHAR, J.



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