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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.798 of 2009

G.Suresh ... Appellant/ 2nd respondent

Vs.

1.Chellapandi ... 1st respondent / Petitioner / Claimant

2.Dharmaraj Augustin ... 2nd respondent/ 1st respondent

(This appeal is dismissed in respect of the 2nd respondent, as per the order of this Court, dated 01.10.2010.)

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 05.01.2009, passed in M.C.O.P.No.66 of 2006 by the Motor Accident Claims Tribunal / Subordinate Judge, Sivakasi.

For appellant : Mr.M.Ashok Kumar

For 1st respondent : Mr.S.Srinivasaragavan

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JUDGMENT

This appeal has been filed by the appellant / owner of the vehicle challenging the award, dated 05.01.2009, passed in M.C.O.P.No.66 of 2006.

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2. It is a case of injury. The manner of the accident is not in dispute. The first respondent/claimant has filed the claim petition claiming Rs.1 lakh as compensation. The second respondent herein is the rider of the vehicle. On the side of the first respondent/claimant, PWs.1 to 3 were examined and Exs.P1 to P10 were marked. On the side of the appellant and the second respondent, the second respondent himself was examined as RW1 and Ex.R1 was marked. The Tribunal has awarded Rs.56,000/- towards disability; Rs.20,000/- towards pain and sufferings; Rs.2,000/- towards transportation and extra nourishment, and Rs.800/- towards medical bills, totalling Rs.78,800/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. Challenging the said award, the appellant/owner of the vehicle has filed this appeal.

3. The learned counsel appearing for the appellant/owner of the vehicle submitted that the rider of the vehicle viz., the second respondent was acquitted in the criminal case, which clearly proved that the second respondent is not responsible for the accident and the appellant's vehicle had not involved in the accident. On the other hand, he would submit that the first respondent / claimant has sustained only simple injuries, but the Tribunal has excessively awarded a sum of Rs.56,000/- towards disability of 56% and Rs.20,000/- towards pain and sufferings. Thus, he prayed to allow this appeal.

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4. The learned counsel appearing for the first respondent submitted that the acquittal of the rider of the vehicle in the criminal case was not on merits but merely on the ground of benefit of doubt and the same is not binding on the civil Court. He would further submit that the Tribunal has awarded only meagre amount as compensation and therefore, the award passed by the Tribunal need not be interfered with. Thus, he prayed to dismiss this appeal.

5. Heard the learned counsel appearing for both sides and perused the materials available on record carefully.

6. According to the appellant/claimant, the rider of the vehicle acquitted from the criminal case and hence, he is not responsible for the accident and consequently, involvement of his vehicle is to be treated as not proved in this case. According to the first respondent/claimant, the acquittal of the rider of the vehicle in the criminal case was not on merits but merely on the ground of benefit of doubt and therefore, the same is not binding on the civil Court.

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7. When the issue as to whether the judgment of the Criminal Courts are binding on the Civil Court/Motor Accident Claims Tribunal, arises for consideration, a Division Bench of this Court in an unreported decision in C.M.A.No.1369 of 2017 (TNSTC Vs. P.Shanthi and others)

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dated 28.04.2017, after referring to various decisions, has held as follows:

> "19.Mere acquittal in a criminal case does not lead to an automatic inference that there was no negligence on the part of RW1, driver of the bus. The standard of proof required is entirely different from the Criminal Court. In Motor Accident Claims Cases, preponderance of probability is the test to arrive at the conclusion regarding negligence.
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> 20. **In Vinobabai and others versus K.S.R.T.C. and another**, reported in **1979 ACJ 282**, the High Court of Karnataka held as follows:
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> 8. ....Thus, the law is settled that when the driver is convicted in a regular trial before the Criminal Court, the fact that he is convicted becomes admissible in evidence in a civil proceeding and it becomes prima facie evidence that the driver was culpably negligent in causing the accident. The converse is not true ; because the driver is acquitted in a criminal case arising out of the accident, it is not established even prima facie that the driver is not negligent, as a higher degree of culpability is required to bring home an offence."
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> 21. In **N.K.V. Bros. (P.) Ltd. versus M. Karumai Ammal and others etc.,** reported in **AIR 1980 Supreme Court 1354**, a

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bus hit an over-hanging high tension wire resulting in 26 casualties. The driver earned acquittal in the criminal case on the score that the tragedy that happened was the Act of God. The Hon'ble Apex Court held that the plea that the criminal case had ended in acquittal and that, therefore, a civil suit must follow suit, was rightly rejected by the Tribunal. It is worthwhile to reproduce para 2 of the judgment herein:

"2. The Facts: A stage carriage belonging to the petitioner was on a trip when, after nightfall, the bus hit an over-hanging high tension wire resulting in 26 casualties of which 8 proved instantaneously fatal. A criminal case ensued but the accused-driver was acquitted on the score that the tragedy that happened was an act of God. The Accidents Claims Tribunal which tried the claims for compensation under the Motor Vehicles Act, came to the conclusion, affirmed by the High Court, that, despite the screams of the passengers about the dangerous overhanging wire ahead, the rash driver sped towards the lethal spot. Some lost their lives instantly; several lost their limbs likewise. The High Court, after examining the materials, concluded:

"We therefore sustain the finding of the Tribunal that the accident had taken place due to the rashness and negligence of R.W.1 (driver) and consequently the appellant is vicariously liable to pay compensation to the claimant."

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The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirements of culpable rashness under Section 304A, I.P.C. is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to re-open the holdings on culpability and compensation."

22. In **Oriental Insurance Co. Ltd., v. K.Balasubramanian** reported in **2007 (2) TN MAC 399**, as follows:

"It is a well settled proposition of law that the judgments of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal no relevant in a Civil Case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the

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Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence."

23. In **Himachal Road Transport Corporation and another versus Jarnail Singh and others**, reported in **2009 ACJ 2807**, wherein it has been held that acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal, as to whether the driver was negligent or not in causing the accident. At Paragraph 15, it is held as follows:

"15. In view of the definitive law laid down by their Lordships of the Hon'ble Supreme Court and the judgments cited hereinabove, it is now well settled law that the acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal whether the driver was negligence or not in causing the accident."

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24. In **Geeta Devi v. Rajesh** reported in **2011 ACJ 279**, the Rajasthan High Court held as follows:

"It is, indeed, trite to state that while the finding of a civil Court is binding on the criminal Court, the finding of the criminal court could not

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> and should not influence the decision of the Tribunal. The Tribunal is supposed to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the criminal Court."
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> 25. Therefore, considering the object of the beneficial legislation, this Court is of the considered view that the approach of the Tribunal, in determining negligence, on the basis of evidence, cannot be said to be manifestly illegal, warranting interference. Hence, finding regarding negligence, is confirmed. Quantum of compensation awarded to the respondents/claimants is also just and reasonable."

8. From the above decision, it is clear that the acquittal in a criminal case does not lead to an automatic inference that there was no negligence on the part of the driver / rider of the vehicle. Further, the acquittal of the driver in the criminal case will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal. Therefore, the first contention of the appellant cannot be sustained.

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9. So far as the quantum of compensation is concerned, it is seen that Dr.Jegannathan, who was examined as PW3, had assessed the disability of the claimant as 56%. He has stated in his evidence that the fractured bones were not reunited and there is no possibility for reunion

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also and therefore, the claimant cannot do his work as before. Though PW3 was cross examined at length, the appellant has not brought forth anything in his favour. As the first respondent/claimant has lost his avocation, the Tribunal could have adopted multiplier method. But the Tribunal has awarded only Rs.56,000/- by fixing Rs.1,000/- per percentage of disability. Further, the Tribunal has awarded only Rs. 20,000/- towards pain and sufferings. Quantum of compensation awarded by the Tribunal is just and reasonable. Therefore, this Court is not inclined to interfere with the award passed by the Tribunal. Viewing from any angle, the award passed by the Tribunal is liable to be confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Index :Yes/No **18.06.2019**
Internet :Yes/No
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To

1.The Motor Accident Claims Tribunal,
Subordinate Judge,
Sivakasi.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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J.NISHA BANU,J.

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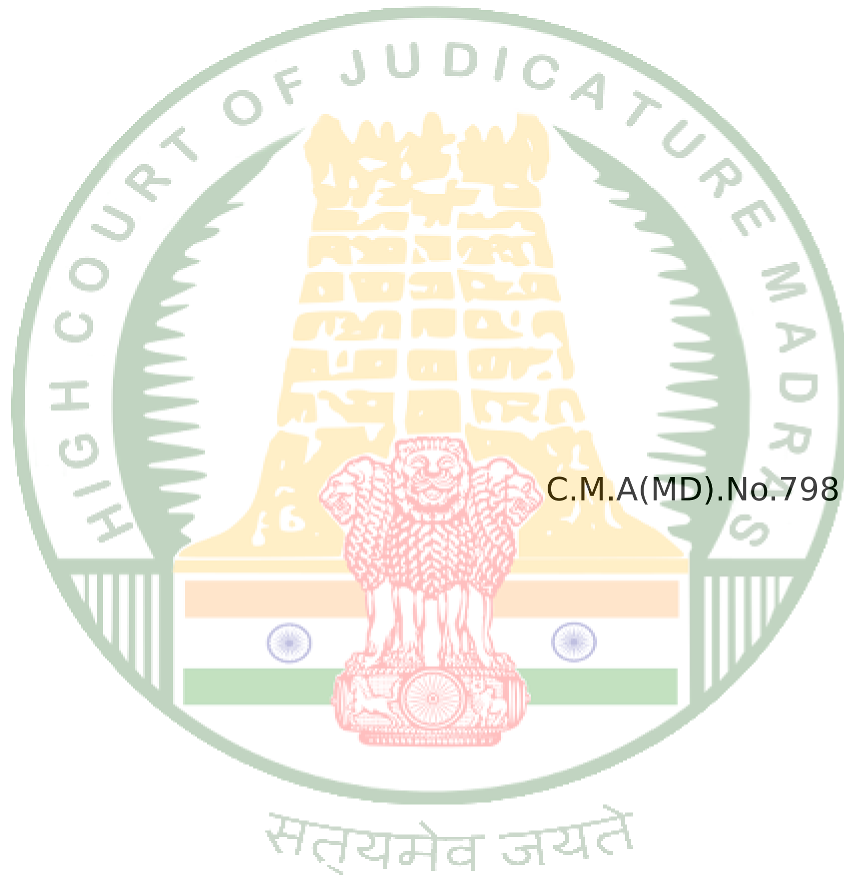

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