



C.M.A.Nos.421 & 3118 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.421 & 3118 of 2023

and

C.M.P.No.29521 of 2023

C.M.A.No.421 of 2023:

G.Murugan

...Appellant

Vs

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan House, Anna Salai,
Chennai 2

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and to enhance the amount awarded in MCOP.No.7351 of 2017 dated 05.03.2022 on the file of Motor Accident Claims Tribunal (IV Small Causes Court) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.A.Vinothraj



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C.M.A.No.3118 of 2023:

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan House, Anna Salai,
Chennai 2

...Appellant

Vs

G.Murugan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 05.03.2022 passed in MCOP.No.7351 of 2017 by the Motor Accident Claims Tribunal, Chennai (IV Court of Small Causes), Chennai by allowing this appeal.

For Appellant : Mr.A.Vinothraj

For Respondent : Mr.K.Varadha Kamaraj

COMMON JUDGMENT

The appeal in C.M.A.No.421 of 2023 has been filed by the claimant challenging the negligence fixed by the Tribunal.



2. The appeal in C.M.A.No.3118 of 2023 has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal.

3. The learned counsel appearing for the claimant would submit that since the FIR was filed against the injured, the Tribunal had fixed the contributory negligence at the rate of 50% against the injured. Further, he would contend that even though it was deposed by the driver of the bus that only due to the sudden application of break, the injured was thrown out of the bus, the said evidence was not at all considered by the Tribunal because for the Tribunal, it appears as a single line evidence and there is no law to ignore when a vital evidence is available. Therefore, since the Tribunal has wrongly come to the conclusion and fixed the negligence only on the ground that the FIR has been filed against the injured, he prays this Court to set aside the negligence fixed by the Tribunal.

4. The learned counsel for the Transport Corporation would submit that in the present case, only after taking into consideration of the information available in the FIR, the Tribunal had fixed the contributory negligence against



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the injured at 50% and hence, he requests this Court to confirm the same.

Further, he would submit that the quantum of compensation has been challenged by the Transport Corporation vide C.M.A.No.3118 of 2023 since the same is on higher side.

5. In reply, the learned counsel appearing for the appellant would submit that since the left leg of the injured was amputated and the disability was determined by the medical board as 90%, the Tribunal had rightly fixed the functional disability of the injured as 100% and hence, he requests this Court to confirm the same.

6. Heard the learned counsel for the appellant and the respondents and also perused the materials available on record.

7. In the present case, at the time of examination, the PW1 had stated as follows:

நான் 04.02.2016 அன்று காலை சுமார் 12.00
மணிக்கு திருவல்லிக்கேணியில் இருந்து 32ஏ என்ற
பேருந்தில் ஏறம்போது இந்த விபத்து நடந்தது. நான்



பேருந்தில் பயணம் செய்ததற்கானப் பயணச்சீட்டை
தாக்கல் செய்யவில்லை என்றால் சரிதான்.

8. Further, in the cross-examination, he had stated as follows:

விபத்து சமயத்தில் பேருந்து சற்று கூட்டமாக இருந்தது. நான் பேருந்தின் ஓட்டுனர் இருக்கைக்கு 2வது சீட்டில் உள்ள கம்பியை பிடித்துக்கொண்டு இருந்தேன். விபத்து சமயத்தில் பேருந்தின் படிக்கட்டில் யாரும் பயணம் செய்யவில்லை. விபத்து நடந்த சாலை திருவல்லிக்கேணி மெயின் சாலையில் ரத்தினகேப் ஓட்டல் எதிரே நடந்தது. ரத்தினகேப் எதிரில் பேருந்து நிறுத்தம் கிடையாது.

9. A reading of the aforesaid depositions of PW1 makes it clear that the injured had not travelled on the foot board of the bus and only due to the sudden application of brake, the injured was thrown out of the bus. Further, the said statement was also confirmed by the driver of the bus (RW1) at the time of examination, wherein he had stated as follows:

விபத்தில் காயம் அடைந்தவர் நான் பேருந்தை தீடினென்று பிரேக் போட்டதினால் தான் பேருந்தில் இருந்து கீழே விழுந்தார் என்றால் சரிதான்.



10. A perusal of the above deposition makes it clear that only due to the sudden application of brake, the injured was thrown out of the bus. However, the Tribunal had considered the aforesaid depositions as a single line evidence and fixed the negligence against the injured based on the information available in FIR. However, this Court is of the view that when a vital evidence is available, the same has to be considered by the Court even if it a single line evidence. In such case, the aforesaid single line evidence indicates that the accident was occurred only due to the sudden application of brake and the same was also confirmed by the driver of the bus. Hence, the said statement is a very vital evidence and it has to be almost considered as an eye-witness. However, the Tribunal had failed to consider the said evidence. Therefore, this Court is of the view that the fixation of 50% negligence against the injured is not proper and the same is liable to be set aside. Therefore, this Court is inclined to fix the entire negligence against the driver of the bus. Accordingly, the entire negligence is fixed against the driver of the bus.

11. Further, with regard to the challenge made against the quantum of compensation awarded by the Tribunal, this Court is of the considered view that



since the left leg of the injured was amputated, the Tribunal had fixed the functional disability as 100% and hence, there is no force in the submission made by the learned counsel appearing for the Transport Corporation. Thus, this Court does not find any fault in the said aspect of determining the compensation by the Tribunal since the injured, who was aged about 36 years at the time of accident, cannot carry on the day-to-day activities and he has to depend on someone for the same. In such view, this Court is inclined to confirm the compensation awarded by the Tribunal. Accordingly, the same stands confirmed.

12. In the result, the CMA.No.3118 of 2023, which has been filed by the Transport Corporation, is dismissed and the CMA.No.421 of 2023, which has been filed by the injured, is partly allowed.

13. Therefore, the Transport Corporation is directed to deposit a sum of Rs.27,26,000/- along with interest at the rate of 7.5% and costs, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.7351 of 2017 on the file of



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the Motor Accident Claims Tribunal, Chennai (IV Court of Small Causes).

Further, the claimant/injured shall pay necessary Court fee, if any, on the enhanced compensation. Thereafter, the Tribunal is directed to immediately transfer the entire amount to the bank account of the injured by way of RTGS, in the same proportions determined by the Court below, within a period of 3 weeks from the date of deposit and from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is earlier. No costs.

05.01.2024

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

nsa

To:

The Motor Accident Claims Tribunal,
Chief Small Causes Court, Chennai



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KRISHNAN RAMASAMY,J.

nsa

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