

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2617 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Division-I)Ltd.,
Villupuram. Appellant/Respondent

Vs.

K.Ramu ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173
Motor Vehicles Act, 1988 against the Judgment and decree dated
11.10.2013 passed in M.C.O.P.No.68 of 2013, on the file of the
Motor Accident Claims Tribunal/II Additional District Court,
Tindivanam.

For Appellant : Mr.P.Paramasiva Doss

JUDGMENT

This Appeal is directed against the Judgment and decree
dated 11.10.2013 passed in M.C.O.P.No.68 of 2013 on the file of
the Motor Accident Claims Tribunal/II Additional District Court,
Villupuram, in awarding a sum of Rs.2,52,795/-.

2. On 6.12.2009, while the respondent was waiting for
a bus at Tindivanam Bus Stop to go to Pondicherry, the
appellant's Bus bearing Reg.No.TN 32 N 2674 came from Chennai
and stopped in the Bus Stop to alight and pick up the
passengers. As such, the respondent stepped into the Bus
through front door steps. At that time, the driver of the Bus,
without any care and caution, took the Bus in a rash and
negligent manner. As the more number of passengers stood in
the front side door steps, the petitioner could not get into the
Bus and as a result, the respondent was dragged to some
distance and the left front wheel of the Bus ran over his legs.
Seeing this tragic, the passengers and public shouted at the
driver and on hearing the noise, the driver stopped the Bus.
The respondent sustained fractures and injuries all over his

body. Immediately, he was taken to the Government Hospital, Tindivanam and thereafter, he was taken to Mahatma Gandhi Medical College and Research Institute, Pillayarkuppam, Pondicherry and then, to MIOT Hospital, Chennai. The respondent/injured filed a claim petition claiming a sum of Rs.5,00,000/- as compensation.

3. On appreciation of pleadings and evidence on record, by judgment and decree dated 11.10.2013 in MCOP No.68 of 2013, the Tribunal awarded a total compensation of Rs.2,52,795/- with interest at 7.5% from the date of claim petition till the date of realisation and costs. Being aggrieved by the same, the Transport Corporation, Villupuram, has filed this Appeal.

4. The learned counsel appearing for the Transport Corporation would submit that the claimant alone had caused the accident and the driver of appellant bus has got nothing to do with the accident, for, when the offending Bus of the Transport Corporation was proceeding with a moderate speed, the respondent, while boarding the bus which was moving with reasonable speed, had lost his balance, fell down and sustained injuries. This aspect was not considered by the Tribunal. Adding further, the learned counsel for the appellant would submit that the Tribunal has erroneously awarded a sum of Rs.90,000/- towards 45% permanent disability. Like wise, the compensation of Rs.1,03,500/- awarded towards medical expenses, the compensation of Rs.15,000/- towards pain and sufferings and Rs.15,000/- awarded towards transportation are on the higher side and without any basis, therefore, the learned counsel appearing for the appellant would submit that by upsetting the impugned judgment and decree, just and reasonable compensation have to be awarded.

5. Heard the learned counsel appearing for the appellant and perused the materials available on record.

6. This Court is unable to accept the contention of the learned counsel for the appellant that the Tribunal has not considered the point that the accident had occurred purely due to the negligence of the claimant. Before the learned Tribunal, the respondent/injured was examined himself as PW.1 and he has stated in his deposition that on 6.12.2009, while he was waiting for a bus at Tindivanam Bus stop to go to Pondicherry, the appellant's bus bearing Reg.No.TN-32-N-2674, came from Chennai towards Pondicherry and stopped at the Bus Stop in order to alight the passengers. After alighting the passengers, he stepped into the bus through the front door steps. While so, the driver of the bus negligently drove the bus without taking note of him getting into the bus. Some of

the passengers were also standing on the foot board, due to which, the respondent could not get into the bus. As he was forced to hang, he was dragged on to some distance and the left front wheel of the bus ran over his leg. Seeing this accident, the passengers and the public shouted and on hearing the noise, the driver of the bus stopped the bus. According to the respondent/injured, the accident has occurred due to the rash and negligent driving of the appellant's bus driver. On the other hand, the appellant's bus driver has been examined as RW.1. In his deposition, he has stated that on 6.12.2009 at about 3.00 p.m., he was driving the bus towards Tindivanam. At about 6.00 p.m., the conductor alighted the passengers at the Tindivanam Bus stop. While the bus was coming in the turning, the respondent came and got into the bus where he fell down and his left leg got into the left front wheel. As per his evidence, the respondent got in to the moving bus at the turning and he negligently brought his leg near the left front wheel, due to which, he sustained injuries. Both the parties shifted the negligence on each other. Therefore, the Tribunal had to see some other evidence for the proof of negligence. As such, the Ex.P.1 FIR given by the respondent's son has stated that his father/respondent was stepping into the bus and as there were more passengers standing on the foot board, he was hanging his leg out side the bus, due to which, the front wheel ran over the legs. Hence, the Tribunal came to the conclusion that the respondent has also contributed negligence to the accident by travelling on the foot board. At the same time, it is the duty of the conductor to see that nobody travels by standing on the foot board or by hanging in the bus. Hence, taking into account all these aspects, the learned Tribunal has fixed 25% negligence on the petitioner and 75% negligence on the part of the appellant bus driver and conductor also. Therefore, this Court sees no infirmity in such findings given by the Tribunal.

7. Coming to the point that the Tribunal has awarded a sum of Rs.90,000/- towards permanent disability arbitrarily, the Tribunal has relied on the Disability Certificate Ex.P.12 issued by Doctor PW.2 who has stated that the respondent has suffered fracture of right tibia, degloving injury of right leg. He further added that the respondent/injured would feel difficult in squatting and to sit with cross legged and walk over slopes. Considering the above ailments, PW.2 Doctor has fixed partial permanent disability at 45%. The Tribunal, by relying on the ratio of the judgment reported in 2007 (1) TNMAC 52, as the respondent was 54 years at the time of accident, held that the respondent was entitled to a sum of Rs.2,000/- per percentage of disability and for 45% partial permanent disability, the respondent was entitled to a sum of 90,000/-. Therefore, this Court is unable to see any infirmity in awarding the sum of

Rs.90,000/- towards partial permanent disability. With regard to pain and suffering, the respondent took treatment for nearly 40 days as inpatient from 7.12.2009 to 30.12.2009 and again from 27.4.2010 to 5.5.2010 at Miot Hospital, Chennai. Considering that he has undergone surgery, the Tribunal held that the respondent was entitled to a sum of Rs.15,000/- towards pain and sufferings. Similarly, with regard to medical bills, the respondent/claimant marked Medical Bills - Ex.P.7 series for a sum of Rs.1,03,433/-. Hence, the Tribunal held that the claimant/respondent was entitled to a sum of Rs.1,03,500/- towards medical expenses. With regard to travelling expenses, the respondent produced bills for Rs.36,046/- towards travelling expenses and besides, based on the treatment taken by him at various places, the Tribunal fixed the travelling expenses as Rs.15,000/-, which this Court finds it just and reasonable.

8. Therefore, for the reasons stated above, this Court finds no merit in the Appeal. Hence, the Appeal is dismissed and the Award is hereby confirmed. No costs. The connected Miscellaneous Petition is closed.

9. The appellant / Transport Corporation is directed to deposit the entire award amount with interest and costs, less the amount already deposited if any, to the credit of M.C.O.P.No.68 of 2013, on the file of the Motor Accident Claims Tribunal/II Additional District Court, Tindivanam, within a period of four weeks from the date of receipt of a copy of this order, On such deposit, the claimant/respondent is permitted to withdraw the entire amount by making necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

asvm

To

The Motor Accident Claims Tribunal/
II Additional District Court,
Tindivanam.

+1cc to Mr.P.Paramasiva Doss, Advocate, S.R.No.65333

C.M.A.No.2617 of 2015
and M.P.No.1 of 2015

SR(CO)
CA(15/04/2016)