

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-11-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

CIVIL MISCELLANEOUS APPEAL No.2671 of 2015

and

M.P.No.1 of 2015

The Managing Director
Tamil Nadu State Transport Corporation,
Kumbakonam.

... Appellant/3rd Respondent

Vs.

1.Porkai Pandian
2.Senguttuvan
3.The Manager, United India Insurance Company
Limited, Chidambaram.

.. Respondents/Petitioner/Respondents 1 & 2

Civil miscellaneous appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.3.2015, made in M.C.O.P.No.45 of 2007, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Chidambaram.

For Appellant : Mr.D.Venkatachalam

For Respondents: Mr.T.Gobinath
for Caveator/R1

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN, J.)

By consent, this civil miscellaneous appeal itself is taken up for final disposal. The parties hereinafter will be referred to as arrayed in the claim petition.

2.The petitioner/claimant was aged about 26 years and was eking out his livelihood by installing bore-well pipes as well as by working as Tractor Driver and it was in the nature of self-employment.

3. On 9.11.2004, at about 10.00 P.M., the injured-claimant sat on the pillion of stationary Hero Hondo motorcycle of his friend bearing Registration No.TN-51-Y-3011, and was conversing with him near the temple compound wall at North-South Main Road, Velakudi Village, and at that time, the bus belonging to the third respondent/Transport Corporation bearing Registration No.TN-49-N-071, was proceeding from Chidambaram to Sirkali and dashed against a Bajaj Motorcycle, bearing Registration No.TN-31/P 9930, which came in the opposite direction, and as a consequence, lost its control and hit against the above said stationary Hero Hondo motorcycle and as a consequence, both of them had sustained grievous injuries. The injured-claimant was initially admitted at Raja Muthiah Memorial College and Hospital, Annamalai Nagar, Chidambaram, and thereafter, shifted to PIMS, Kalapet, Puducherry, and was undergoing treatment for nearly two years.

4. It is the specific case of the claimant that as a result of the accident, he suffered fractures on his vertebrae viz. L1, L2 and L3, and a major surgery was done to set right the same. Since the claimant suffered injuries on his spinal cord, he developed numbness below his hip and therefore, has to carry on his life in a wheel chair only and hence, came forward to file a petition in MCOP No.45 of 2007, on the file of the Motor Accident Claims Tribunal (Sub Court), Chidambaram, claiming a compensation of Rs.25 lakhs.

5. The first respondent remained ex-parte and the second respondent-Insurer of the first respondent, took a stand that it is not a necessary party for deciding the claim petition for the reason that admittedly, the transport bus belonging to the third respondent-Corporation, hit against the Hero Hondo motorcycle and as a consequence, two persons sustained injuries.

6. The third respondent-Corporation has filed a counter denying the averments made in the claim petition, and would state that the first respondent drove the motorcycle bearing Registration No.TN-31/P 9930, in a rash and negligent manner and dashed against the bus and immediately, the bus was halted and however, the first respondent unable to control the vehicle, dashed against the motorcycle TN-51-Y-3011 and as a consequence, injuries have been sustained by the claimant and the vehicle in question, is not the sole cause for causing the accident and prayed for dismissal of the claim petition.

7. During the course of enquiry, the claimant examined himself as P.W.1, apart from examining the Doctor as P.W.2 and one Kumar as P.W.3, and marked Exs.P1 to P22 and also M.O.1, X-ray. On behalf of the third respondent, the conductor of the bus was examined as R.W.1. The Tribunal on consideration of oral and documentary evidence, has awarded a sum of Rs.18,78,000/- towards compensation with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till realisation. Challenging the legality of the said award, the third respondent-Corporation has filed this appeal.

8.The learned Counsel appearing for the appellant/third respondent/Transport Corporation, would contend that the Transport Corporation cannot be attributed with negligence for the reason that the Bajaj motorcycle was driven in a rash and negligent manner and dashed against the bus and in order to avoid further damage, the Driver of the bus lost control of the vehicle and dashed against the Hero Hondo motorcycle and as a consequence, the two persons sustained injuries and since the first respondent/claimant did not adduce any proper, sufficient and tenable evidence as to the loss of income and disability, the compensation awarded, in any event, is on the higher side and prays for setting aside the award passed by the Tribunal.

9.Per contra, the learned Counsel appearing for the caveator/first respondent/petitioner/claimant, would contend that the Tribunal, on a thorough consideration of oral and documentary evidence and taking into consideration the disability suffered by the first respondent/claimant in the form of grievous and serious injuries in his spinal cord, has rightly awarded the compensation and prays for dismissal of the appeal with costs.

10.This Court paid it's best attention on the rival submissions and also perused the materials placed before it in the form of typed-set of documents.

11.The questions that arise for consideration, are as under:-

- (i) Whether the driver of the third respondent-Corporation has driven the vehicle in a rash and negligent manner?
- (ii) Whether the quantum of compensation awarded by the Tribunal, is excessive and thereby, warrants interference?

12.QUESTION No.(i):- It is an admitted fact that the vehicle belonging to the appellant/Transport Corporation, dashed against the stationary Hero Hondo motorcycle and as a consequence, two persons had sustained injuries. The claimant has suffered serious injuries on his spinal cord. It is the case of the appellant/Corporation that the Bajaj Motorcycle was driven in a rash and negligent manner and dashed against the bus and in order to avoid further damage, the driver of the bus tried to control the vehicle and as a consequence, it hit against the Hero Hondo motorcycle as well as two persons and as a consequence, both of them had sustained injuries. The Tribunal taking into consideration Exs.P1 and P18 coupled with the testimony of P.W.1, has reached a conclusion that the transport bus after dashing against the Bajaj motorcycle, lost it's control and hit against the stationary Hero Hondo motorcycle, which resulted in injuries to two persons. The fact remains that even the driver of the vehicle after hitting the Bajaj motorcycle, was not able to control the vehicle and thereby, it has been established that the vehicle was driven in a rash and negligent manner and the driver of the vehicle was

not able to control the same and hit against the stationary Hero Hondo motorcycle and as a result, two persons including the claimant, had sustained injuries. Therefore, in the considered opinion of the Court, the finding recorded by the Tribunal that the vehicle belonging to the appellant/Corporation, was driven in a rash and negligent manner and was the sole cause for the accident, warrants no interference, and Question No.(i) is answered in negative and against the appellant/Transport Corporation.

13.QUESTION No.(ii):- It is the case of the first respondent/claimant that he was aged about 26 years and was eking his livelihood by installing bore-well pipes and also by working as a Tractor Driver, and on an average, was earning a sum of Rs.10,000/- per month. As per Ex.P22, Driving Licence, he was born on 12.6.1976, and on the date of accident i.e., 9.11.2004, was aged about 28 years. The Tribunal, on going through Ex.P22, Driving Licence, found that the first respondent/claimant was having licence to drive the heavy motor vehicle also and de hors the objection raised by the appellant/Transport Corporation as to his occupation, further found that he could have driven heavy motor vehicle also and could have earned a sum of Rs.250/- per day, which works out to Rs.7,500/- as his monthly income. This Court is of the view that the said reason assigned by the Tribunal, is tenable.

13(i) The testimony of P.W.2 Doctor, coupled with the documentary evidence viz. Exs.P2 to P17 and P19 as well as Ex.P20, would disclose that as a result of the accident, the claimant suffered grievous injury on his spinal cord and in fact, his L1, L2 and L3 got fractured and a major surgery was also performed and plates were put and he was in the hospital for quite a long time. The testimony of P.W.2 would disclose that on account of fracture on the spinal cord, he suffered numbness and has to spend rest of his life only on a wheel chair.

13(ii) The claimant was originally admitted at Raja Muthiah Memorial College and Hospital, Chidambaram and thereafter, was shifted to PIMS Hospital at Puducherry and was taking treatment as an inpatient in two intervals viz. between 10.11.2004 and 8.2.2005 and between 2.3.2005 and 4.7.2005, and would have incurred transportation expenses. The Tribunal has awarded a sum of Rs.10,000/- under the said head. In the considered opinion of the Court, the said amount is on the lower side for the reason that the claimant was originally admitted in the hospital at Chidambaram and thereafter, shifted to Puducherry and therefore, it should be enhanced by adding Rs.10,000/- (Rs.20,000/-). The same is accordingly, enhanced.

13(iii) As a result of the injury sustained by the claimant, the Tribunal awarded a sum of Rs.50,000/- towards food and nutrition, and this Court is of the view that considering the nature of injury and the treatment required, it cannot be said to be exorbitant.

13(iv) Insofar as the medical expenses are concerned,

the first respondent/claimant has marked Ex.P4, P6 to P9, P13 to P15 and P19 to show that he has spent a sum of Rs.2,03,155/- for medical treatment and apart from that, he has also paid advance under Ex.P5. The Tribunal, taking into consideration the fact that the claimant has suffered injury on his spinal cord and it requires constant medical attention including future treatment, has awarded a sum of Rs.2,50,000/- under the said head. This Court is of the view that the same is reasonable.

13(v) The first respondent/claimant had the assistance of an attender to look after him for the reason that he cannot carry on his normal avocation and under that head, the Tribunal has awarded a sum of Rs.10,000/-. It is to be taken note of at this juncture, that the job of an attender is almost a full time job and he has to be with the injured almost throughout the day and therefore, a sum of Rs.10,000/- awarded by the Tribunal, is on the lower side. This Court is of the view that a sum of Rs.10,000/- is to be added under the said head (Rs.20,000/-). The same is accordingly, enhanced.

13(vi) There is no serious controversy that the first respondent/claimant suffered injuries on the spinal cord viz. L1, L2 and L3, and in fact, it got fractured and he had undergone a major surgery to set right the same. As already pointed out, he was an inpatient originally at Raja Muthiah Memorial College and Hospital at Chidambaram and thereafter, at PIMS Hospital, Puducherry for quite some time and he claimed a sum of Rs.17,75,000/- under the said head. The Tribunal taking note of the evidence of P.W.2 Doctor, coupled with the disability certificate marked as Ex.P20, and Ex.P19, receipt, under which, a wheel chair was purchased, has formed an opinion that the claimant has to suffer throughout his life on account of the said disability, and cannot carry on his normal avocation and shall confine/restrict him to wheel chair throughout his life and therefore, it awarded Rs.1,00,000/- under the head "pain and suffering" and Rs.14,58,000/- towards permanent disability.

13(vii) The learned Counsel appearing for the appellant, would submit that since the Tribunal has arrived at a finding that the first respondent/claimant was aged about 28 years at the time of accident, has adopted the multiplier of 18 and the proper multiplier would have been 17.

13(viii) Per contra, the learned Counsel appearing for the first respondent/claimant, would submit that taking into consideration the permanent disability suffered by the first respondent, the Tribunal thought it fit to adopt the multiplier of 18.

13(ix) However, this Court is of the view that the adoption of 17 multiplier is the proper one and in that event, as against the sum of Rs.14,58,000/- awarded under the said head, the claimant is entitled to Rs.13,77,000/- under the head "permanent disability". The amount awarded by the Tribunal under the head "pain and suffering" does not warrant

interference.

13(x) The claimant during the course of his treatment, was prevented from attending his normal duties and avocation, and it is also his claim that he was self-employed prior to the accident. The Tribunal has awarded a sum of Rs.2,00,000/- towards partial loss of earning. This Court is of the view that the quantum awarded under the said head, warrants no interference.

13(xi) The learned Counsel appearing for the first respondent/claimant, would submit that though it has not been specifically averred that the first respondent was a bachelor at the time of accident, his testimony would disclose that he has deposed so and nothing useful/contrary was elicited in his cross-examination and on account of his disability, there is bleak prospect of getting married in future for the reason that his movement is confined to wheel chair only and prays for some compensation under the said head.

13(xii) Per contra, the learned Counsel appearing for the appellant/Corporation, would submit that there is no specific pleading to that effect in the claim petition; but, however, in the testimony, the said fact has been disclosed and would further add that in the absence of any specific pleading and evidence, no amount can be awarded under the said head.

13(xiii) The claimant has suffered serious injuries on the spinal cord and the evidence of P.W.2 Doctor, coupled with the disability certificate under Ex.P20, would disclose that the first respondent/claimant was aged about 28 years at the time of accident. As already pointed out, he has been confined to wheel chair and hence, his marital prospect has got diminished. Therefore, he is entitled to a sum of Rs.61,000/- under the said head. Question No.(ii) is answered in the above said terms.

14. In the result, the award and decree passed by the Tribunal, are modified as stated above, and the first respondent/claimant is entitled to a compensation of Rs.18,78,000/- with interest at the rate of 7.5% per annum from the date of claim petition till realisation, except the period between 17.3.2009 and 4.2.2014, during which, the claim petition was dismissed for default and restored; and proportionate costs. The civil miscellaneous appeal is disposed of. Consequently, connected miscellaneous petition is closed.

15. The learned Counsel appearing for the appellant/Corporation, would submit that for realising the award amount, the first respondent/claimant has already levied execution in E.P.No.205/2014, and as per the interim orders passed, a bus belonging to the Corporation, has already been attached and on instructions, would submit that the appellant/Transport Corporation would deposit 25% of the compensation awarded by the Tribunal, within a period of four weeks from today and the remaining 75% at the rate of 25% each, within a period of twelve weeks thereafter. On the said

submission, the Court heard the submissions of the learned Counsel appearing for the first respondent/claimant, also.

16.The Tribunal shall release the attached vehicle on deposit of 25% of the compensation awarded by it, within a period of ten weeks from today. In the light of the undertaking given by the Transport Corporation, the remaining 75% shall be deposited at the rate of 25% each, within a period of twelve weeks thereafter at regular interval, failing which, it is open to the first respondent/claimant to initiate appropriate action to recover the said amount including moving this Court under the Contempt of Courts Act.

NSV

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

The Subordinate Judge,
The Motor Accident Claims Tribunal,
Chidambaram.

+ 1 cc to Mr.T.Gobinath, Advocvate Sr 65231.

+ 1 cc to Mr.D.Venkatachalam, Advocate Sr 65313.

UG/CO

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