

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2015

CORAM :

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. No.864 of 2011

and

M.P.No.1 of 2011

Karnataka State Road

Transport Corporation,

Represented by its Managing Director,

Mysore Urban Division,

Mysore.

... Appellant/Respondent

vs.

Nazir Ahmed

... Respondent/Petitioner

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment made in M.C.O.P No.76 of 2006 dated 11.06.2007 on the file of the Motor Accidents Claims Tribunal (Fast Track Court-II), Ranipet.

For appellant : Mr. T.Thiyagarajan

For respondent : Mr. C.Prabakaran

JUDGMENT

The Karnataka State Transport Corporation, who is the respondent before the Tribunal is the appellant herein. For the sake of convenience the parties are referred to as per their rank before the Tribunal.

2. The appeal is filed against the compensation of Rs.2,69,000/- awarded by the Tribunal. The correctness of the award is challenged both, by denying the cause of accident as due to the negligent driving of the bus driver and by questioning the quantum of compensation awarded under various heads.

3. Regarding the cause of accident, the witnesses examined on both sides are PW-1 claimant and RW-1 driver of the bus and Exhibits produced are Ex.P1 - FIR, Ex.P3 - MVI report, and Ex.P4 - charge sheet filed by the Police. The two vehicles involved in the accident are one Scooter having the claimant as the pillion rider and the bus belonging to the State Transport Corporation. The claimant has categorically stated in his claim petition that when the scooter was

approaching Ram Nagar on Bangalore to Mysore National Highway, the Transport Corporation bus coming from Mysore, driven in a rash and negligent manner, without giving any horn, dashed against the hind portion of the scooter. The claimant as PW-1 reiterated the same theory in the witness box. PW-1 has denied the suggestion put to him in the course of his cross examination that the accident was due to the rash and negligent driving of the scooter driver. As against the theory so advanced on the side of the claimant, the respondent has in paragraph 9 of the counter affidavit stated that the bus was entering Ram Nagar bus stand and the scooter rider without seeing the bus entering the bus stand, hit the bus on the left side rear portion of the bus and in the impact both the rider and the pillion rider fell down and sustained injuries and the occurrence took place solely due to the negligence of scooter rider. It is also deposed by RW-1 bus driver. However, such theory is not supported by Ex.P1, F.I.R registered against the bus driver and the statement of traffic patrol at Igoor Circle, where the accident taken place. It is specifically stated in the F.I.R as well as in the statement of the traffic police that it is the bus driver who rode the vehicle in a rash and negligent manner and dashed against the scooter. The police also, after due investigation filed Ex.P4 charge sheet against the bus driver alone. Had it been true that the bus driver was not responsible for the accident and it is the scooter rider who is solely responsible for the accident, the bus driver would have immediately lodged a complaint against the scooter driver and the failure to do so by the bus driver remains unexplained. The overall appreciation of the evidence available herein, would compel this Court to accept the plea of the claimant that the cause of accident is due to rash and negligent driving of the bus driver and the finding of the Tribunal to that effect need not be interfered with.

4. Regarding the quantum of compensation, the Tribunal has awarded a sum of Rs.2,69,000/- under various heads as follows :-

Sl. No.	Heads	Amount granted
1.	Loss of income	Rs. 2,04,000.00
2.	Medical Expenses	Rs. 50,000.00
3.	Transport to Hospital	Rs. 5,000.00
4.	Pain and Sufferings	Rs. 6,000.00
5.	Cloth Damages	Rs. 1,000.00
6.	Loss of Income	Rs. 3,000.00
	Total	Rs. 2,69,000.00

In my considered view, the compensation awarded as above, is just and reasonable and no reason is made out to question the same as high or disproportionate to the injuries suffered permanent disability suffered and loss sustained by the claimant.

5. The learned counsel for the respondent claimant has, at this juncture, sought for enhancement of compensation. It is contended before this Court that the amount awarded by the Tribunal is too low and inadequate. It is sought to be argued so in this appeal filed by the Insurer, without filing any separate appeal or cross appeal by the claimant seeking enhancement of the compensation. The learned counsel for the respondent claimant has also argued before this Court that the claimant is entitled to get just compensation and there is no restriction that compensation could be awarded only upto the amount claimed by the claimant and in appropriate cases where the evidence brought on record is sufficient, to pass such award more amount than what is claimed can be awarded as compensation. The learned counsel for the respondent claimant has also cited the following two judgments of the Hon'ble Apex Court, in support of the contention so raised herein.

- i. Nagappa vs. Gurudayal Singh & Ors., 2004 (2) TN MAC 398 (SC)
- ii. Jitendra Khimshankar Trivedi & Ors. vs. Kasam Daud Kumbhar & Ors., (2015) 4 SCC 237.

The learned counsel for the respondent claimant has also gone to the extent of saying that in order to render justice to parties, a just compensation could be awarded even though the claimants have not preferred any appeal against the award of compensation. Though this Court is bound by the guidelines issued by the Hon'ble Apex Court, the same is not applicable to the facts of this case. The principles laid down by the Hon'ble Apex Court is only regarding the manner for determination of compensation in the claim petition before the Tribunal and in any appeal or cross appeal filed for enhancement of the award of compensation by the claimant. The principles laid down by the Hon'ble Apex Court cannot be stretched to the extent to enhance the compensation amount, in the appeal filed by the Insurer/Owner without the claimant filing any regular appeal or cross appeal for enhancement of the compensation.

6. In the judgment reported in Nagappa vs. Gurudayal Singh & Ors., 2004 (2) TN MAC 398 (SC), the Hon'ble Apex Court has clearly laid down that the claimants who did not independently challenge the award is not barred from defending the compensation awarded but he will not be entitled to seek enhancement of compensation by urging any new ground in the absence of any Cross Appeal or Cross Objection.

7. The case of Ranjana Prakash & Ors. vs. Divisional Manager and anr., reported in 2011 (2) TN MAC 313 (SC), decided by the Hon'ble Apex Court arose out of an appeal filed by the Insurer challenging the award on the ground that the Tribunal ought to have deducted 30%

from the income towards income tax and ought to have calculated the loss of dependency with reference to the net income. The appeal was contested by the claimant by saying that if 30% was reduced towards income tax deduction, 30% income can be added for future prospectus, so that the income assessed by the Tribunal will remain undisturbed and the computation of compensation by the Tribunal need not be interfered with. The Hon'ble Apex Court while accepting the plea of the claimants, was of the view that the claimants could certainly defend the quantum of compensation awarded by the Tribunal, by pointing out errors and omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. In that context, the Hon'ble Supreme Court has in paragraph 6 of its decision, observed as follows :-

' The fact that Claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an Appeal by the Owner/ Insurer, the Claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any Cross-Appeal or Cross-Objections.'

The same view is reiterated in paragraph 8, as follows :-

' The High Court cannot obviously increase the compensation in an Appeal by Owner/ Insurer for reducing the compensation, nor can it reduce the compensation in an Appeal by the Claimants seeking enhancement of compensation. '

Even in the decision reported in *Jitendra Khimshankar Trivedi & Ors. vs. Kasam Daud Kumbhar & Ors.*, (2015) 4 SCC 237, cited on the side of the respondent claimant, the Hon'ble Apex Court was inclined to enhance the compensation only by exercising jurisdiction under Article 142 of the Constitution of India, which is not available to other courts.

8. That being the factual and legal position, the respondent claimant cannot be now permitted to seek any enhancement of compensation in this appeal, filed by the Transport Corporation, without filing any Appeal, Cross Appeal or Cross Objection. For the discussion held above, the impugned award stands confirmed.

9. In the result, the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. The appellant Transport Corporation is directed to deposit the entire award amount, with interest and cost, after deducting the amount already deposited before the Tribunal, within eight weeks from the date of receipt of a

copy of this judgment. On such deposit, the respondent claimant is permitted to withdraw his award amount, with the accrued interest and costs, on due cheque application. Consequently, the connected M.P is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

avr

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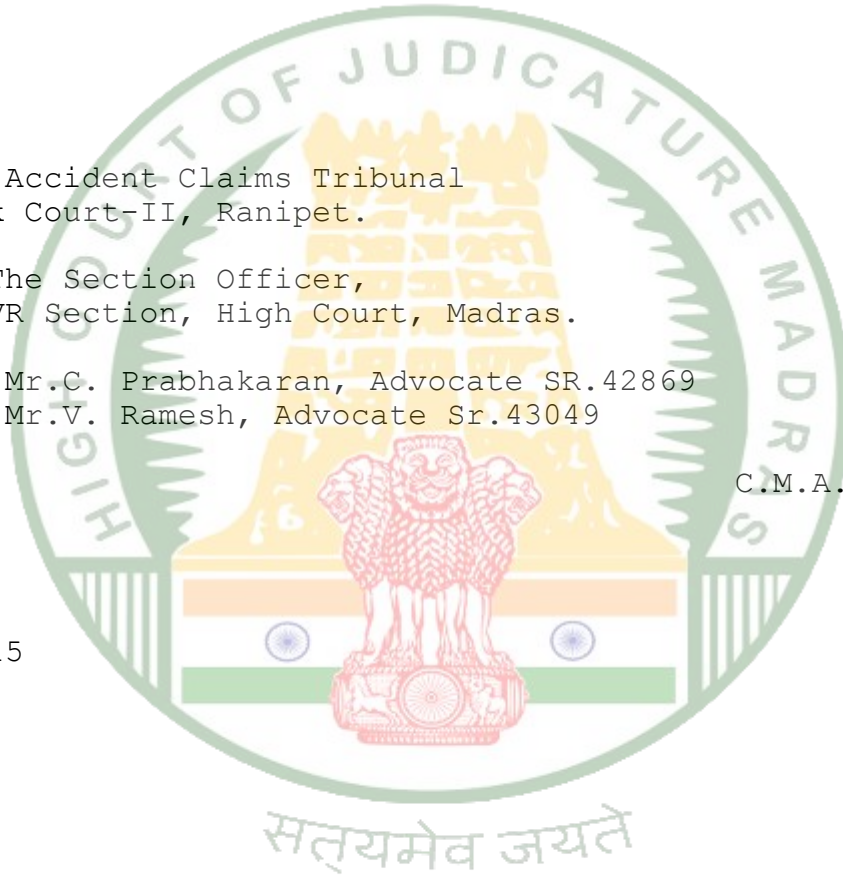
The Motor Accident Claims Tribunal
Fast Track Court-II, Ranipet.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr.C. Prabhakaran, Advocate SR.42869
+ 1 cc to Mr.V. Ramesh, Advocate Sr.43049

C.M.A. No. 864 of 2011
and
M.P.No.1 of 2011

JSV(CO)
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