

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2289 of 2012

D.Gnanasuriya Bagavan

... Appellant/Petitioner

Vs.

1.The Managing Director,
State Express Transport Corporation Limited,
Pallavan Salai, Chennai - 600 002.

(Notice to the 1st respondent is given
up in the appeal)

2.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd,
Madurai - 5.

(Impleaded as per order in M.P.No.44/2009
dated 21.04.2009)

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicle Act, 1988, against the judgment and decree in
M.C.O.P.No.4330 of 2005, dated 24.08.2011, on the file of the Motor
Accident Claims Tribunal, II Judge Small Causes Court, Chennai.

For Appellant :M/s.UM.Ravichandran

For Respondents :Mr.N.Roofus Abraham

J U D G M E N T

On 05.11.2004 at about 09.30 p.m., when the petitioner was
travelling as a passenger in the respondents bus bearing registration
No.TN-67N-0229 on the G.S.T Road, Acharapakkam, the driver of the
bus drove the bus in a rash and negligent manner and ran it over a
huge pit. As a result, the bus had capsized and the claimant had
sustained grievous injuries. Hence, the claim petition had been
levelled against the respondents.

2. The 2nd respondent had filed a counter statement and resisted the claim petition. The respondent submits that the petitioner was not sitting properly and as a result, the accident had occurred. Therefore, negligence lies on the part of the claimant also. The F.I.R has been registered after a lapse of 26 days. Further, the respondent denied the averments regarding age, income, nature of injuries and medical treatment received and disability.

3. After recording the averments of both sides, the Tribunal had framed four issues. On the side of the claimant, two witnesses were examined and fourteen documents were marked. On the side of the respondents one witness was examined and no document was marked. After recording the evidence of both sides and on perusing the exhibit marked by the claimant, the Tribunal had awarded a sum of Rs.1,97,000/- with interest at the rate of 7.5% per annum. Not being satisfied with the quantum of compensation, the claimant has filed the above appeal.

4. The highly competent counsel Mr.UM.Ravichandran, appearing for the claimant submits that the driver of the bus had committed the said accident. Hence, F.I.R had been levelled against him. The claimant had sustained multiple bone fracture injuries and he had undergone treatment at various hospitals namely Government Hospital, Madhuranthagam Government hospital, Chengalpattu and SRM Medical College hospital and St.Thomas Hospital, St.Thomas Mount, Chennai - 16. During medical treatment period, a surgical operation was conducted. The Doctor had assessed the disability at 65%. After the accident, the claimant is unable to do his business. The Tribunal had not granted an adequate compensation under the relevant heads.

5. The very competent counsel Mr.N.Roofus Abraham, appearing for the respondents submits that the claimant was travelling in the bus in a negligent manner by not being seated properly and as such the negligence lies on the part of the claimant also. However, the Tribunal had granted an adequate compensation under the relevant heads.

6. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the claimant had sustained 65% disability and he had undergone treatment at 5 different hospitals as inpatient as well as outpatient and during the medical treatment period, a surgical operation was conducted and steel plates with screws were fixed in his right thigh. Besides the claimant's right leg had been affected. Hence, this Court reassess the compensation as follows:

Rs.1,30,000/- towards disability;
Rs.30,000/- is awarded under the head of pain and suffering;
Rs.20,000/- towards transport;
Rs.15,000/- towards nutrition;
Rs.15,000/- towards attender charges;
Rs.30,000/- towards loss of earning during medical treatment period;

Rs.42,000/- towards medical expenses;

Rs.1,50,000/- towards loss of amenities and loss of comfort, since the claimant has developed a permanent limp due to the accident. In total, this Court awards Rs.4,32,000/- as compensation. After deducting the compensation of Rs.1,97,000/- awarded by the trial Court, this Court awards Rs.2,35,000/- as additional compensation. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation.

7. This Court directs the respondents to deposit the said compensation amount with interest, as per this Courts findings within a period of eight weeks from the date of receipt of this order. After such a deposit being made, it is open to the claimant to withdraw the said compensation amount with interest after filing a memo along with a copy of this order. Hence, the above appeal is partly allowed. There is no order as to costs.

-s/d-

Assistant Registrar(CO)

dt:08/10/2015

True Copy

Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal,
II Judge Small Causes Court, Chennai.

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