

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 14.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.3189 of 2013
and
M.P.Nos.1 of 2013 and 1 of 2015

The Managing Director
Metropolitan Transport Corporation Ltd.
Anna Salai, Chennai-2.

...Appellant

vs.

S.Guhan

...Respondent

Prayer: Challenge is made, in this Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act 1988, to the award, dated 24.11.2012 and made in the Motor Accident Claim Petition in M.C.O.P.No.3594 of 2010 on the file of the Motor Accident Claims Tribunal, (II Court of Small Causes), Chennai.

For appellant : M/s.S.V.Vasanth Kumar

For respondent : Mr.K. Varadha Kamaraj

JUDGMENT

(Judgment of the Court was delivered by T. MATHIVANAN, J.)

This memorandum of civil miscellaneous appeal has been directed against the award, dated 24.11.2012 and made in the Motor Accident Claim Petition in M.C.O.P.No.3594 of 2010 on the file of the Motor Accident Claims Tribunal (Second Court of Small Causes), Chennai.

2. The respondent/Metropolitan Transport Corporation Ltd., is the appellant herein, whereas the claimant is the respondent.

3. Heard M/s.S.V.Vasantha Kumar, learned counsel appearing for the appellant/Transport Corporation and Mr.K.Vardha Kamaraj, learned counsel appearing for the respondent/claimant.

4. It appears from the records that the respondent has filed a claim petition in M.C.O.P.No.3594 of 2010 on the file of the Motor Accident Claims Tribunal (Second Court of Small Causes), Chennai, claiming a sum of Rs.25,00,000/- for the grievous injuries sustained by him in a road traffic accident said to have been occurred on 28.8.2010 at 1.00 p.m. near Paralur Over Bridge Slope at G.S.T. Road, Kancheepuram District.

5. The appellant/Transport Corporation has vehemently resisted the claim petition on the ground that the accident was occurred solely due to the negligent act of the claimant himself and therefore, it was contended that no rashness and negligence could be attached with the driver of the offending vehicle.

6. The contention of the appellant/Transport Corporation was turned down by the Tribunal and based on the evidences both oral and documentary, the Tribunal has proceeded to award a sum of Rs.27,08,308/- and the same was rounded to Rs.27,08,500/-.

7. Questioning the above said award against the claim of Rs.25,00,000/-, the appellant/Transport Corporation stands before us with this appeal.

8. Mr.S.V.Vasantha Kumar has challenged the award both on the grounds of negligence as well as quantum.

9. The respondent/claimant had examined himself as P.W.1 and during the course of his examination Exs.P.1 to P.12 were marked. On the part of the appellant/Transport Corporation, one E. Murugesan, Investigator of the Transport Corporation, was examined as R.W.1, but no document was marked.

10. On the fateful day, i.e., on 28.8.2010 at about 1.00 p.m., the respondent/claimant was proceeding in his motor cycle bearing Registration No.TN-02-AA-2711 at G.S.T. Road, near Paralur over Bridge slope when the passenger bus bearing Registration No.TN-01-N-4866 belonging to the appellant/Corporation had hit against the motor cycle from behind.

11. The claimant has contended that the accident had taken place due to the rashness and negligence on the part of the driver, who was on the steering wheel of the offending vehicle. But that was strongly denied by the appellant/Corporation saying that the claimant had ridden his motor cycle in front of the

bus and suddenly turned towards right. Since, there was a drizzling, the claimant had lost his balance and as a result of which his motor cycle skidded and the claimant had also fallen on the road a few feet ahead of the bus. On seeing this unexpected event, the driver of the bus had applied sudden brake to avoid a major accident. However, the bus had grazed the motor cyclist, who had fallen on the road.

12. The appellant also contended that in spite of sincere efforts taken by the driver of the bus, the accident could not be averted.

13. Mr.S.V.Vasantha Kumar, learned counsel appearing for the appellant has argued that besides the evidence of P.W.1, who is the claimant in the claim petition, no other evidence was available to substantiate his claim that the accident was taken place due to the rashness and negligence on the part of the driver of the vehicle.

14. He has also added that the evidence adduced by R.W.1, who is none other than the investigator of the appellant/Transport Corporation would be sufficient to show that the accident was taken place mainly due to the negligent act of the claimant himself.

15. In so far as the contention of Mr.S.V. Vasantha Kumar, is concerned, we would like to place it on record that it is settled principle of law that the evidence of the private investigator attached either to the transport corporation or to the insurance Company is not sufficient to prove the negligence. Therefore, we are of the considered view that the evidence given by R.W.1 is not sufficient to prove the negligence.

16. On perusal of the records, it would reveal that the petitioner had sustained severe injuries on his both legs, which resulted in the amputation of left leg above the knee level. Besides this, he has suffered a fracture of right femur coupled with severe head injuries and he had also sustained injuries over his abdomen and multiple injuries all over his body.

17. As argued by Mr. S.V. Vasantha Kumar, if the bus had grazed the motor cycle of the claimant, the injuries enlisted in the claim petition would not have been inflicted to the claimant. Since the bus had directly hit behind the motor cycle in which the claimant was travelling, he had sustained grievous injuries as stated by the claimant.

18. Therefore, the argument with regard to the negligence on the part of the respondent/claimant does not bear any force and therefore, it is liable to be rejected.

19. In so far as the quantum is concerned, the claimant was aged about 37 years at the time of occurrence. According to the claimant, he was working as Marketing Manager in M/s. Sleeves India Automative Pvt. Ltd. at Ramapuram, Chennai. His claim has been substantiated by the evidence of P.W.2, who is the accountant of M/s.Sleeves India Automative Pvt. Ltd. P.W.2 has been duly authorised under Ex.P.8 by M/s. Sleeves India Automative Pvt. Ltd., to adduce evidence on behalf of their company.

20. Ex.P.9 is the copy of the attendance Register. Ex.P.10 is the copy of the wage Register and Ex.P.11 is the resignation letter of the claimant. These documents would go to show that at the time of the accident, the claimant was working in the above said company.

21. With regard to the income, the claimant has marked Ex.P.5 Salary Certificate as well as Ex.P.10 Wage Register. As rightly observed by the Tribunal, there is no confliction between the evidence of P.W.1 and the documentary evidences, viz., Ex.P.5, and Ex.P.10. Therefore, the Tribunal has trusted the evidence of P.W.2 and based on his evidence, the monthly income was determined at Rs.12,948/-.

22. P.W.3, Dr.J.R.R. Thiagarajan had examined the claimant clinically for the purpose of assessing his disability. According to P.W.3, he had also gone through the discharge summary issued by the authority of MIOT Hospital at Chennai.

23. P.W.3 has deposed that after his examination, he had assessed the disability of the claimant at 80%, which is permanent and partial, for having performed the amputation of his left leg above the knee level and besides this, he had also the disability at 10% for the soft tissue injury found in his right leg.

24. In this connection, he had issued Ex.P.12 Disability Certificate. Ex.P.7 photograph of the petitioner, which would clearly show the amputation of his left leg above the knee level. The Tribunal has assigned the reason for the application of multiplier method saying that the petitioner had underwent amputation of his left leg above knee level. Therefore, it had become necessary to award compensation by

applying the multiplier method. Since the claimant was aged about 37 years, the multiplier of 16 has been adopted.

25. As afore stated, the Tribunal has determined the monthly income of the claimant at Rs.12,948/-. Applying the multiplier of 16, the Tribunal has assessed the quantum of compensation at Rs.19,88,813/-. Besides this, the Tribunal has also awarded certain amounts under the following heads.

Sl.No.	Name of Head	Amount
1	Towards loss of income for 6 months	Rs.77,688
2	Towards Transportation	Rs. 20,000
3	Towards Extra Nourishment	Rs. 20,000
4	Towards damage to clothes	Rs. 2,000
5	Towards Medical Expenses	Rs. 4,94,807
6	Towards Attender Charges	Rs. 10,000
7	Towards Mental agony to the petitioner, loss of amenities of life and loss of enjoyment of life	Rs. 25,000
8	Towards Pain and Suffering	Rs. 50,000
9	Towards Disability of 10% at the rate of Rs.2000/- per disability	Rs. 20,000
	Total	Rs. 7,19,495

25a. Thus, the total award comes to Rs.27,08,308/- (Rs.19,88,813 + Rs.7,19,495).

26. Though the total award of Rs.27,08,308/- seems to be higher than the actual claim of Rs.25,00,000/-, according to our view, the Tribunal has correctly calculated and awarded the compensation, which do not require our interference for the reason that the unassailable evidences are available to show that the respondent/claimant was working as a Marketing Manager and due to the rashness and negligence on the part of the driver of the offending vehicle, he had lost his right leg and he had also sustained severe injury over his right leg at the age of 37 years.

27. It is also revealed that soon after the occurrence he had tendered his resignation under Ex.P.11. On assessing the evidences both oral and documentary, we are of the firm view that what was awarded by the Tribunal is just and reasonable compensation, though it is exceeded the actual claim of the claimant.

In the result, the appeal preferred by the Transport Corporation is dismissed confirming the award dated 24.11.2012 and made in M.C.O.P.No.3594 of 2010 on the file of the Motor Accident Claims Tribunal (Second Court of Small Causes), Chennai. However, there will be no order as to costs. Connected M.Ps. are also dismissed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rnb

To

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

2. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai, Chennai-2.

1 CC to M/s.S.V.Vasantha Kumar, Advocate SR.No. 35382

1 CC to Mr.K. Varadha Kamaraj, Advocate SR.No. 35540

C.M.A.No.3189 of 2013
and

M.P.Nos.1 of 2013 and 1 of 2015

CA (CO)
PSI (26.08.2015)