

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1638 of 2016

The Managing Director

Tamil Nadu State Transport Corporation

Vazhudhareddy

Villupuram

... Appellant/Respondent

Vs.

K.Elayaraja

... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.09.2015 and made in M.C.O.P.No.59 of 2013 on the file of Motor Accident Claims Tribunal (III Additional District and Sessions Judge), Kallakurichi, Villupuram District.

For Appellant : Mr.S.Sairaman

JUDGMENT

Questioning the negligence as well as the quantum of award, this appeal is filed by the appellant Transport Corporation, Villupuram Division under Section 173 of the Motor Vehicles Act.

2. It is revealed from the records that the respondent/claimant claiming a sum of Rs.15,00,000/- for the injuries sustained by him in a Road Traffic Accident said to have been taken place on 08.01.2011 had moved the claims Tribunal with a claim petition in M.C.O.P.No.251 of 2011. According to respondent, that on 08.01.2011, at about 10.00 am, when he was travelling as a pillion rider in a two wheeler which was ridden by one Ramachandran, a passenger bus bearing Registration No.TN32 N 2587 driven by its driver in a rash and negligent manner had hit against their two wheeler and as a result of which the rider of the motorcycle had succumbed to injuries while he had sustained serious injuries. The claim petition was contested by the appellant Transport Corporation on

various grounds. However, based on the evidences available on record, the Tribunal had proceeded to award totally a sum of Rs.5,21,000/-applying the multiplier method.

3. Mr.S.Sairaman, learned counsel for the appellant has projected his arguments on the following three grounds:

i) Respondent/claimant himself had invited the accident on account of his own negligence;

ii) The Tribunal ought to have at least applied the principle of contributory negligence;

iii).There was no proper and acceptable evidence in respect of disability, which is said to have been suffered by the respondent/claimant.

4. With regard to the contention on the ground of negligence, Mr.S.Sairaman has contended that Ex.R1-Referred Charge Sheet pertaining to the case in Crime No.2 of 2011 would go to show that the said case was closed as mistake of fact. Therefore, it could be presumed that no positive challan was lodged as against the driver of the appellant Transport Corporation.

5. In this connection, he has also added that the closure of criminal case as against the driver of the passenger bus would lead the Court to presume that the respondent/claimant had invited the accident on account of his negligent act. Considering this aspect, this Court would like to refer the evidences available on record. The respondent / claimant himself had given a vivid account about the manner of the accident. According to him, he was travelling as a pillion rider while the deceased Ramachandran was riding the motorcycle. While so RW1, who was on the steering wheel of the bus, had driven the same in a rash and negligent manner and hit against the said motorcycle and due to the accident, the respondent/claimant had sustained multiple injuries which resulted in restriction of his routine work.

6. The bus driver was examined as RW1. He has stated that while the two wheeler was moving upwards in a hairpin bend, he was driving the bus down to the hill and on seeing the two wheeler, he had stopped the bus on the left side of the road. While so, the deceased Ramachandran, who had ridden the motorcycle, had dashed against the right side bumper of the bus.

7. With reference to this, the Tribunal has observed in the award that obviously when the bus was coming down from the hill, the speed would be higher than the vehicle which is moving uphill and that it is difficult to pick up speed in a vehicle which is moving up in the hill. The Tribunal has also observed that when the appellant/Transport Corporation is claiming that the accident was taken place due to the rashness and negligence

on the part of the deceased Ramachandran, the Transport Corporation had not examined any independent witness who was travelling in the bus in order to fasten the negligence on the rider of the motorcycle (deceased). Ultimately, the Tribunal has found that only on account of the rashness and negligence on the part of the driver of the bus, who was examined as RW1, the accident was occurred.

8. This Court also perused the testimonies of the witnesses and other documentary evidence and on appreciation of the above said evidences, this Court is of the view that the accident was solely taken place due to the negligent act of the driver of the bus, and not on the part of the rider of the motorcycle. Insofar as the contention on the ground of negligence is concerned, this Court endorses the finding given by the Tribunal.

9. With regard to quantum, it is to be noted that at the time of accident, the appellant/claimant was aged about 25 years and he was working as an agricultural coolie. As aforesaid, the respondent / claimant had sustained the following three types of injuries:

- i) Fracture of right femur;
- ii) Fracture of right nasal bone; and
- iii) Fracture of right Zygoma and right maxillary sinus bone.

10. As the respondent was aged about 25 years, on applying the multiplier of 17 and after fixing the monthly income of Rs.3,000/-, the Tribunal, after giving 50% deduction, had calculated the loss of earning capacity at Rs.3,06,000/- (Rs.3000/- x 12 x 17 x 50/100) and as per Ex.B3 medical bills, the Tribunal had awarded a sum of Rs.1,26,954/-, which was rounded off to Rs.1,25,000/-. Apart from this, towards loss of future amenities, a sum of Rs.20,000/- was also awarded. In total, the Tribunal had awarded a sum of Rs.5,21,000/- directing the insurance company to pay this amount with 9% interest per annum within three months from the date of the award.

11. This Court has perused the grounds of appeal along with impugned award and finds that the award of the Tribunal does not require the interference of this Court to exercise its appellate jurisdiction. However, on a perusal of the award it is seen that the Tribunal has awarded the interest at the rate of 9%. Following various decisions of this Court and the Apex Court, the same is hereby reduced to 7.5%. The appellant Transport Corporation is directed to deposit the entire award amount of Rs.5,21,000/- along with 7.5% interest, less the amount already deposited, if any, within a period of six weeks from the date receipt of a copy of this order. On such deposit being made,

the respondent / claimant is permitted to withdraw the entire award amount along with accrued interest and cost without actually filing any formal application. No costs.

-s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To
The Motor Accident Claims Tribunal
(VI Small Causes Court), Chennai

+1 CC to Mr.S.Sairaman, Advocate sr 47356

C.M.A.No.1638 of 2016

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