

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.545 of 2014

M.Pandian

..Appellant

-vs-

The Tamil Nadu Express Transport
Corporation Ltd.,
Pallavan Salai

..Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.9.2007 made in M.C.O.P.No.66 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant :: Mr.S.Kamadevan
For Respondent :: Mr.S.V.Vasanthakumar

JUDGMENT

This appeal is filed by the injured claimant aggrieved by the improper award of a sum of Rs.51,000/- as the total compensation, as against the claim of Rs.3,00,000/- for the multiple injuries sustained by him in an accident while travelling as one of the passengers in the bus bearing Registration No.TN 29 N 1305 belonging to the respondent Corporation.

2. Mr.S.Kamadevan, learned counsel for the appellant/claimant has submitted that on 16.12.2005 when the appellant, being a vessel merchant, was travelling as one of the passengers in the bus bearing Registration No.TN 29 N 1305 belonging to the respondent Corporation, at about 5.30 A.M., while the bus was nearing Mangoon at Ammapalayam on the Perambalur to Thuraiyur main road, the rear right spring of the bus was broken and due to the said mechanical defect, the injured fell down and sustained grievous injuries all over his body including fracture in right thigh and leg, fracture in left shoulder and in left leg. Immediately thereafter, he was rushed to the Government Hospital at Perambalur, wherein he was admitted as an in-patient for a week and after discharge, he was referred by the doctors to take conservative treatment. In view

of the accident, as the injured suffered not only loss of income at the rate of Rs.100/- per day, but also continuous pain and suffering, he made a claim before the Tribunal for payment of Rs.3,00,000/- along with interest. Based on the complaint lodged by the Conductor of the bus, a case in Crime No.367 of 2005 was registered on the file of Padalur Police Station against the driver of the bus for the offence under Sections 279 and 337 of IPC. The Tribunal, accepting the First Information Report marked as Ex.P1, considering the evidence adduced by the injured, who was examined as P.W.1, has come to the conclusion that the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the respondent Corporation. Consequently, the Transport Corporation, being the owner of the bus, has been saddled with the liability. With regard to the injury part, Dr.Saravanan, who was examined as P.W.4, has deposed that on 10.9.2007 the injured approached him for getting a disability certificate and after examination, he found the fracture at right trochanter was malunited; right hip flexion has been reduced to 30 degrees and the abduction has also been reduced to 15 degrees. Moreover, the rotation was also reduced to 15 degrees. Besides the left lower limb was shortened by 2 cms. In view of the fracture, the right scapula was malunited and his right shoulder abduction was also reduced by 40 degrees and rotation reduced by 20 degrees, which has caused permanent disability for the injured while sitting cross legged, walking for a long distance, standing for long time. Therefore he assessed the disability at 50% and issued the disability certificate under Ex.P5. He further deposed that if the injured took physiotherapy continuously, there is a possibility of 2% reduction in the disability. Accepting the evidence adduced by Dr.Saravanan, who was examined as P.W.4, the Tribunal also has fixed 48% disability. While fixing 48% disability, it is argued that the Tribunal has wrongly fixed Rs.48,000/- at the rate of Rs.1,000/- per percentage of disability. Hence the award of compensation by the Tribunal towards disability, being very less, is liable to be reasonably enhanced, he pleaded.

3. Per contra, the learned counsel for the respondent Corporation has submitted that the accident had not occurred due to the negligence on the part of the driver, as admittedly when the bus was driven, due to some mechanical defect, the rear right spring was broken, as a result the rear side wheels went out of control. However, the driver of the bus carefully stopped the vehicle. Only in that process the injured, who was one of the passengers, sustained injuries. Therefore the finding given by the Tribunal holding that the accident occurred only due to the rash and negligent driving of the driver cannot be accepted, he pleaded.

4. This Court is not able to agree with the submissions of the learned counsel for the respondent, for the reason that the Corporation has not challenged the finding on negligence or liability. Therefore, when the Tribunal, on perusal of the evidence, both oral and documentary, has come to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the bus belonging to the Corporation. Consequently, for the fault of its driver, the Transport Corporation has been saddled with the vicarious liability to pay the compensation. The said finding of the Tribunal is confirmed.

5. Coming to the quantum part, the Tribunal, after accepting 48% disability, has awarded only a sum of Rs.48,000/- at the rate of Rs.1,000/- per percentage of disability. But this Court is not able to accept the said approach adopted by the Tribunal. The reason is that Dr.Saravanan, who was examined as P.W.4, after examining the injured, has issued the disability certificate marked as Ex.P5 along with the X-ray marked as Ex.P6, which would disclose that the fracture at right trochanter was malunited. Besides the right hip flexion has been reduced to 30 degrees and the abduction has also been reduced to 15 degrees, as a result the rotation was also reduced to 15 degrees. This apart, the left lower limb was shortened by 2 cms and the fracture of the right scapula was mal-united. Due to the right shoulder abduction being reduced by 40 degrees and the rotation reduced by 20 degrees, the injured was finding it difficult while sitting cross legged and also not able to walk for a long distance and stand for a long time. In my considered opinion, this would certainly cause permanent discomfort to the injured for doing his day-to-day activities. Although the doctor assessed the disability at 50%, his further deposition that if the injured took physiotherapy continuously, there is a possibility of 2% reduction in the disability, absolutely holds good. But, however, the Tribunal, for the permanent discomfort suffered by the injured to carry on his day-to-day activities with the help of attender, in my considered view, should have awarded at the rate of Rs.3,000/- for each percentage of disability. Therefore a sum of Rs.1,44,000/- is awarded for 48% disability at the rate of Rs.3,000/- per percentage of disability, instead of Rs.48,000/- awarded by the Tribunal. Further, the wound certificate marked as Ex.P2 shows that for dislocation of the right hip joint, the doctor has advised the injured to take conservative treatment. Though the injured was treated as an in-patient for one week at Government Hospital, Perambalur, since he had taken conservative treatment for a longer period as out-patient, this Court fixes a sum of Rs.3,000/- per month and a sum of Rs.9,000/- is awarded towards loss of income for a period of three months, instead of Rs.500/- awarded by the Tribunal. Similarly for pain and sufferings, as mentioned above, when the injured has taken in-patient treatment for one week and subsequently taken treatment as out-patient,

this Court is inclined to fix a sum of Rs.25,000/- towards pain and sufferings, instead of Rs.500/- awarded by the Tribunal. Besides, a sum of Rs.5,000/- each is awarded towards nutrition and transport expenses. However, the award of Rs.500/- by the Tribunal towards medical bills is set aside, as the injured has not produced any medical bills.

6. In the result, the appellant/injured is entitled to a total compensation of Rs.1,88,000/- together with 7.5% interest per annum from the date of petition till the date of realisation. The civil miscellaneous appeal is allowed on the above terms. No costs.

7. Since it was represented that a sum of Rs.51,000/- together with interest was already deposited and the same was also withdrawn by the claimant, the respondent Corporation is hereby directed to deposit the balance amount of compensation representing the enhancement along with interest to the credit of the M.C.O.P.No.66 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the entire amount along with accrued interest by moving appropriate application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Judge
Motor Accident Claims Tribunal
Perambalur.

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

+ 1 cc to MrS. Kamadavan, Advocate Sr.65628

+ 1 cc to Mr.S.V. Vasantha Kumar, Advocate Sr.65679

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