

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.09.2017

Pronounced on : 07.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 2054 of 2015
Cross Objection No. 63 of 2017
and
M.P. No. 1 of 2015

CMA No. 2054 of 2015

The Managing Director
Tamil Nadu State Transport Corporation Limited
Villupuram Division - I
Villupuram .. Appellant/Respondent

Versus

K. Mahendran .. Respondent/Petitioner

Cross Objection No. 63 of 2017

K. Mahendran .. Cross Objector/Respondent/Petitioner

Versus

The Managing Director
Tamil Nadu State Transport Corporation Limited
Villupuram Division - I
Villupuram .. Respondent/Appellant/Respondent

C.M.A. No. 2054 of 2015:- Appeal filed under Section 173 of The Motor Vehicles Act against the Judgment and Decree dated 09.01.2015 passed in M.C.O.P. No. 5669 of 2003 on the file of Motor Accidents Claims Tribunal (VI Court of Small Causes) Chennai

Cross Objection No. 63 of 2017:- Cross Objection filed under Order 41 Rule 22 of CPC against the Judgment and Decree dated 09.01.2015 passed in M.C.O.P. No. 5669 of 2003 on the file of Motor Accidents Claims Tribunal (VI Court of Small Causes) Chennai

C.M.A. No. 2054 of 2015

For Appellant : Mr. S. Sairaman
For Respondent : Mr. G. Ilangovan

Cross Objection No. 63 of 2017

For Cross Objector : Mr. G. Ilangovan
For Respondent : Mr. S. Sairaman

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

Civil Miscellaneous Appeal No. 2054 of 2015 has been filed by the appellant/Transport Corporation questioning the correctness of the Judgment and Decree passed by the Tribunal in MCOP No. 5669 of 2013 in so far as it relates to the fastening of 50% liability on the Corporation as well as the quantum of compensation awarded in favour of the claimant.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal as well as the correctness of the assessment of 50% towards contributory negligence imposed on him, Cross Objection No. 63 of 2007 has been filed by the claimant/injured

3. As both the appeal and cross objection arise out of the Decree and Judgment passed by the Tribunal in MCOP No. 5669 of 2013, they are taken up for hearing together and are disposed of by this common Judgment.

4. For easy reference of the parties to the appeal and cross objection, the appellant in CMA No. 2054 of 2015 shall be referred as 'Corporation' and the respondent therein shall be referred to as 'claimant'.

5. The claimant has filed MCOP No. 5669 of 2003 before the Motor Accidents Claims Tribunal, Chennai contending that on 16.02.2013 at about 12.45 hours, he was travelling along with his friends - Balaji, Veerakumar, Ravichandran and S. Kumarappan in the bus bearing Registration No. TN 32 N 1616 from Tiruvannamalai to Chennai. The claimant was sitting along with his friend Kumar in the last but three seats on the right side corner. When the bus in which the claimant was travelling was proceeding in the G.S.T. Road, near Arunachalam Hotel, Koochikolathur, another bus bearing Registration No. TN 32 N 1482, belonging to the Corporation, was driven by its driver in the opposite side in a rash and negligent manner and scratched the side portion of the body of the bus in which the claimant was travelling. In the impact, the claimant sustained multiple

fractures in his right upper arm, shoulder joint in the right hand and lacerations all over the body. Immediately, the claimant was taken to Chengalpattu Government Medical College hospital where he underwent treatment as an in-patient from 16.02.2003 to 26.03.2003. During the course of such treatment, his right hand was amputated three inches below his shoulder. According to the claimant, the accident had occurred due to the rash and negligent driving of the Driver of the bus bearing TN 32 N 1482, belonging to the Corporation and therefore, the Corporation is liable to pay compensation for the injuries sustained by him. It was also stated that at the time of accident, the claimant was aged 23 years, working as Graphic and Web Engineer in a firm called EN5X Soft Tech, Kilpauk, Chennai and earning a sum of Rs.18,000/- per month. It was further stated that due to the injuries sustained in the accident, he had lost his employment and was left with no source for his livelihood. Therefore, the claimant has filed the claim petition claiming a sum of Rs.50,00,000/- as compensation.

6. The Transport Corporation resisted the claim petition by contending that at the time of accident, the Driver of the bus bearing Registration No. TN 32 N 1482, belonging to the Corporation had driven it at a moderate speed. At the time when the bus in which the claimant was travelling crossed the bus bearing Registration No. TN 32 N 1482, the claimant was protruding his hands outside the window, due to which he sustained injuries and therefore, no negligence could be attributed as against the Driver of the bus bearing Registration No. TN 32 N 1482. The claimant sustained injuries due to his own negligence, while so, the corporation cannot be mulcted with any liability to pay compensation. As regards the quantum of compensation, the Corporation denied the age, occupation and other particulars furnished by the claimant in the claim petition.

7. Before the Tribunal, in order to prove the averments in the Original Petition, the claimant examined himself as PW1 along with four other witnesses as Pws 2 to 5 and Exs. P1 to P27 were marked. On behalf of the respondent, the driver of the offending bus bearing Registration No. TN 32 N 1482 was examined as RW1 but no document was marked. The Tribunal, on analysing the oral and documentary evidence, rendered a finding that at the time when the accident had occurred, the claimant was admittedly sitting in the right side corner of the bus by resting his right hand elbow outside the window. Therefore, the Tribunal concluded that the claimant had also contributed to the accident and fixed the contributory negligence on the part of the claimant at 50%. As regards the quantum of compensation, the Tribunal, finding that the injuries sustained by the claimant had resulted in loss of his employment and taking note of the medical evidence made available, arrived at the loss of

earning capacity of the claimant at 50%. Further, on the basis of the evidence of PW4 - Mr. Mahadev Karthick, Human Resource Manager of the company in which the claimant was working, the Tribunal has taken the income of the claimant at Rs.18,000/- per month. Taking into account the young age of the claimant at which he lost his livelihood due to the injuries sustained by him in the accident, the Tribunal awarded 50% of the earnings of the claimant towards future prospects. Thus, Rs.27,000/- was assessed as the monthly earnings of the claimant. Out of this amount, 50% was deducted towards personal expenses of the claimant, as he was a bachelor at the time of accident. Thus, a sum of Rs.13,500/- was arrived at as the actual monthly earnings of the claimant for the purpose of awarding compensation. By applying multiplier '18' the Tribunal awarded a sum of Rs.29,16,000/- as total compensation towards loss of earning capacity of the claimant. The Tribunal has also awarded compensation on various other conventional heads and arrived at a total Rs.39,70,000/- out of which 50% was deducted towards contributory negligence. Thus, a sum of Rs.19,85,000/- was awarded as actual compensation to the claimant.

8. The learned counsel for the appellant corporation submitted that at the time of the accident, the driver of the bus bearing Registration No. TN 32 N 1482 was driven by its Driver - RW1 at a normal speed. As the claimant was protruding his right hand i.e., resting his right hand elbow outside the window, he sustained the injury. While so, the claimant alone has to be blamed for the injuries sustained by him and no liability could be fastened on the corporation. In such circumstances, the Tribunal ought to have dismissed the claim petition by fixing the contributory negligence on the part of the claimant at 100% instead of 50%. The learned counsel for the corporation also submitted that the amount awarded by the Tribunal under various heads are excessive and not befitting to the earning of the claimant. Therefore, the learned counsel for the appellant-corporation prayed for setting aside the award passed by the Tribunal.

9. On the other hand, the learned counsel appearing for the claimant would contend that it is incorrect to state that at the time of accident, the claimant was protruding his right hand outside the window. In fact, the bus coming in the opposite direction was driven by RW1 in a rash and negligent manner, came into close proximity with the bus in which the claimant was travelling without any justifiable reasons and rubbed the side portion of the body of the bus, in which the claimant was travelling, which had resulted in the accident. In fact, RW1 has driven the offending bus with such a speed that it had rubbed the bus in which the claimant was travelling. It is further contended that the G.S.T. Road in which the accident had occurred is wide enough to accommodate more than two vehicles at

a time in each direction, while so, there is no necessity for RW1 to drive the vehicle in such close proximity to rub the vehicle in which the claimant was travelling. According to the counsel for the claimant, even assuming that the claimant was protruding his right elbow outside the window, it is the duty of the driver of the bus in which the claimant was travelling as also RW1 who was driving the offending bus, to take adequate precaution to maintain sufficient distance between the two vehicles to ensure that they do not rub or hit against the other. In support of this contention, the learned counsel for the claimant relied on the decision of the Madhya Pradesh High Court in the case of (Sushma Mitra vs. M.P. State Road Transport Corporation and others) reported in 1974 ACJ 87 wherein the Division Bench of the Madhya Pradesh High Court held as follows:-

"7. It cannot be disputed that the driver of a bus which carries passengers owes a duty of care for the safety of passengers. While driving he must have the passengers in contemplation and he must avoid acts of omissions which can reasonably be foreseen to injure them and in deciding what acts or omission he should avoid, he must bear in mind the normal habits of the passengers. It is a matter of common experience that passengers who sit adjoining a window very often rest their arm on the window slit by which act the elbow projects outside the window. The driver of the bus must have these passengers also in contemplation and, therefore, while overtaking or crossing another vehicle on the road he must have sufficient gap between the vehicles to avoid injury to these passengers. The driver of a vehicle coming from the opposite direction owes a similar duty while crossing a passenger bus. He too must have in contemplation passengers sitting near the windows of the oncoming bus who may have their hands resting on the windows, and in crossing the bus he must not only avoid contact with the body of the bus but he must also avoid coming in contact with the elbow of any passenger that may be resting on the window and projecting outside the body of the bus. He must therefore take precautions to move to his near side and leave sufficient gap for preventing any mishap.

8. Even if the act of a passenger in resting his arm on the window of the bus in which he travels may be regarded a negligence or a foolish act, to which aspect I shall come later, it cannot be held that the driver of the bus and the driver of the vehicle crossing the bus owes no duty to such passengers. This habit of passengers is so common that even if it be negligent or foolish it must enter into contemplation of a reasonable driver, for the foresight of a reasonable man, on the basis of which cases of negligence have to be solved, takes into account also

common negligence in human behaviour. A reasonable driver "will guard against the possible negligence of others when experience shows such negligence to be common" and though "not bound to anticipate folly in all its form", he is not entitled to put out of consideration "the teachings of experience as to the form those follies take "London Passenger Transport Board v. Upson (1949) AC 155 (HL) Pg73 & 176. Judged upon this standard it is clear that the driver of the bus in which the plaintiff was travelling and the driver of the truck which crossed the bus both owed a duty of care for the safety of the plaintiff notwithstanding the fact that she was resting her arm on the window of the bus and her elbow was projecting outside the bus.

10. By pointing out the above decision, the learned counsel for the claimant submitted that RW1, who was driving the bus in the opposite direction, has failed to exercise adequate care and caution while driving the bus and it had resulted in the amputation of the right hand of the claimant. In such circumstances, the learned counsel for the claimant would only contend that the contributory negligence fixed by the Tribunal at 50% is without any basis. It is also further stated that the claimant had sustained 85% partial permanent disability inasmuch as his right hand was amputated three inches below the shoulder. While so, by taking the disability at 85%, the Tribunal ought to have awarded adequate compensation to the claimant and he prayed for allowing the Cross Objection filed by the claimant as prayed for and to dismiss the appeal preferred by the Corporation.

11. Keeping the submissions of the counsel on either side, we have carefully gone through the entire materials placed on record. The claimant examined himself as PW1. Apart from the claimant, his friend P.A. Balaji, who was also travelling along with him at the time of accident, was examined as PW3. PW3 in his evidence has deposed that RW1, who had driven the bus in the opposite direction, came into contact with the bus in which he and the claimant were travelling and the accident had occurred due to the rash and negligent driving of RW1. He has also deposed that apart from the claimant, he and others travelling in the bus also sustained minor injuries. Similarly, PW5, another friend of the claimant and who was also travelling in the same bus along with the claimant, deposed that at the time of accident, the claimant was not protruding his hands outside the window but only resting his hands in the window. On the other hand, RW1, who was the driver of the offending bus, in his deposition has stated that since the claimant was protruding his right hand outside the bus in which he was travelling, the bus which he had driven had come in contact with his hand and/or rubbed it, with the result, he sustained injuries. In other

words, the deposition of RW1 is to the effect that the bus driven by him did not come into contact with the body of the bus in which the claimant was travelling. This piece of evidence of RW1 is falsified by the fact that apart from the claimant, his friends, who were examined as PW3 and 5 also sustained minor injuries and this would only indicate that the bus driven by RW1 had in fact come into contact with the body of the bus in which the claimant was travelling.

12. Yet another factor to be considered is the place where the accident had occurred. Before the Tribunal, the claimant has filed Exs. P25 and P26, photographs indicating the geographical location of the road in which the accident had occurred. On perusal of Exs. P25 and 26, we could see that the place where the accident had occurred - G.S.T. Road is wide enough to accommodate atleast two heavy vehicles on each direction, meaning thereby, atleast four heavy vehicles could be accommodated in the road at any given point of time. In other words, the place where the accident had occurred is wide enough to freely drive the heavy vehicles like bus, van or lorry without coming into close proximity or contact with the other vehicles. While so, we are of the opinion that there is no necessity for RW1 to drive the offending vehicle in closer proximity with the bus in which the claimant was travelling. Even according to RW1, when the bus driven by him crossed the bus in which the claimant was travelling, as the claimant was protruding his hands, the accident had occurred. Even this piece of evidence of RW1 would only show the closer proximity at which he had driven the bus. On the other hand, according to the claimant, PW3 and 5, the offending bus driven by RW1 had rubbed or hit the body of the bus in which they were travelling. While so, there is no explanation forthcoming from RW1 as to what made him to drive the offending vehicle in such a closer proximity when the road is wide enough to freely drive the vehicle without coming into close proximity with the other vehicle. In any event, we feel that when the road in which the accident had occurred is wider enough to accommodate four heavy vehicles at the same time, there is no justification or necessity on the part of RW1 to drive the bus in such a closer proximity with the bus in which the claimant was travelling. Therefore, we feel that the accident had occurred due to the negligence on the part of RW1 to a greater extent. In this context, as pointed out by the Division Bench of the Madhya Pradesh High Court, mentioned supra, while driving the vehicles, it is the duty of the driver to ensure sufficient and adequate distance between the vehicle driven by him or the vehicles proceeding behind him or coming from the opposite direction. It is the duty of the driver to exercise adequate care and caution to ensure that the passengers who have boarded the bus reaches their destination safely.

13. At the same time, we also feel that even though claimant and others have sustained injuries in the accident while travelling in the bus, the injuries sustained by the claimant alone is grievous in nature and others who are said to have sustained injuries in the accident are minor in nature. In fact, PW5 in his evidence has deposed that as the injury sustained by him is minor, he did not file any claim petition seeking compensation. In such situation, we feel that the claimant also has contributed to the accident to some extent. In such view of the matter, we feel that fixing the contributory negligence at 25% on the claimant and 75% on the corporation for the negligent driving of the offending bus by RW1 would meet the ends of justice.

14. As regards the quantum of compensation, at the time of accident, the claimant was aged 23 years and working as Graphic and Web Engineer in a company - EN5X Soft Tech, Kilpauk, Chennai and earning a sum of Rs.18,000/- per month. In order to prove such earnings, the claimant examined PW4, Human Resource Manager of the company in which he was employed. The claimant also deposed as PW1 and narrated the ordeal he is undergoing due to the injuries sustained by him in the accident. According to the claimant, his work involves drawing and designing in computer similar to that of an artist. The Tribunal, taking into consideration of the deposition of PW1, PW4 and the fact that the claimant was drawing Rs.18,000/- per month, has deducted 50% towards personal expenses, added 50% towards future prospects and arrived at a sum of Rs.29,16,000/- as compensation under the head of loss of earning capacity by applying multiplier '18'. Similarly, the Tribunal awarded medical expenses on the basis of the medical bills produced by the claimant at a sum of Rs.95,500/-. The Tribunal also awarded a sum of Rs.1,00,000/- towards loss of expectation of life taking note of the fact that due to the injuries, the claimant had lost his matrimonial prospects. Further, the Tribunal awarded a sum of Rs.1,00,000/- towards disfigurement in body and another sum of Rs.3,50,000/- towards future medical expenses. Having regard to the fact that the Tribunal has awarded the compensation amount under various heads classified as pecuniary and non-pecuniary damages, we do not see any reason to interfere with such well considered award passed by the Tribunal.

15. In the result, Civil Miscellaneous Appeal filed by the Corporation is dismissed and the Cross Objection filed by the claimant is partly allowed to the extent of fixing the contributory negligence of the claimant at 25% as against 50% fixed by the Tribunal. No costs. The Transport Corporation is directed to deposit the amount of Rs.29,77,500/- being 75% of the amount awarded by the Tribunal with interest at the rate of 7.5% per annum, after adjusting the amount, if any, deposited already, within a period of four weeks from the date of receipt

of a copy of this Judgment. On such deposit, the claimant is entitled to withdraw the entire compensation amount with accrued interest.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

rsh

To

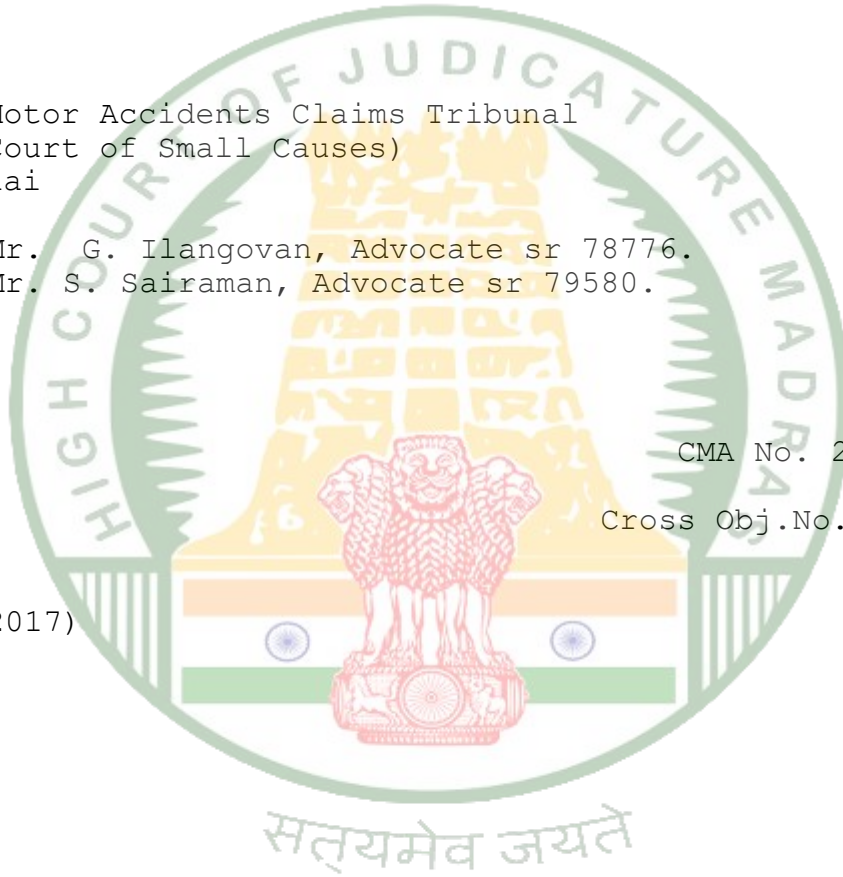
The Motor Accidents Claims Tribunal
(VI Court of Small Causes)
Chennai

+1 Cc to Mr. G. Ilangovan, Advocate sr 78776.

+1 Cc to Mr. S. Sairaman, Advocate sr 79580.

CMA No. 2054 of 2015
and
Cross Obj.No. 63 of 2017

GJ(CO)
SP(21/11/2017)



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