

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2596 of 2011

Madhivanan

...Appellant/Petitioner

Vs.

The Managing Director

Metropolitan Transport Corporation Ltd.,

Pallavan Salai,

Chennai - 600 002.

...Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 11.04.2011 made in MACT.OP.No.339 of 2010 on the file of the IV Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.Suryanarayanan

For Respondent : Mr.S.Sivakumar

JUDGMENT

The claimant in MACT.OP.No.339 of 2010 on the file of the IV Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai approached this Court seeking enhancement of compensation.

2. On 09.11.2008 at about 21.15 hours, the claimant was travelling in the MTC bus bearing Registration No.TN-01-N-3143. According to the claimant, even before he alighted from the bus, the driver took the vehicle, as a result he fell down and sustained grievous injuries, fractures to his right knee and right leg, which required surgical correction. Seeking a compensation of Rs.6,00,000/-, the appellant moved the Tribunal with a claim petition, whereas the Tribunal has passed an award for Rs.1,97,000/-. The nature of the injuries has left permanent disability on the victim, which was medically assessed by P.W.2, the doctor, at 55%. The Tribunal has awarded Rs.1,10,000/- towards partial permanent disability. The other heads are essentially the medical expenses and non-pecuniary heads of damages .

3. The learned counsel for the appellant contended that the appellant was aged 33 years at that relevant time, a welder by

avocation, was self-employed and was earning Rs.6,000/- per month, with which he used to support his family. The injuries and loss of tissues has left him functionally disable, that he can no more squat for carrying out his welding operation. Therefore, this Court may treat the disability as functional disability and apply the multiplier method.

4. Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent argued that the accident had not taken place at a bus stop, but about a $\frac{3}{4}$ km. from the nearest bus stop. Further, the appellant admittedly was not a minor or a child who requires utmost care by the two crew members of the bus. The accident had occurred when appellant was drunk to the brim and attempted to get down from a running bus. In fitness of things, the respondent should have been absolved of all the liability inasmuch as the conduct of the appellant was suicidal.

5. Heard the learned counsel on both sides and perused the records placed before the Court.

6. One fact that emerges from the evidence on record is that the accident had not taken place at a bus stop. To this extent, there is merit in the submission of the learned counsel appearing for the respondent. However, as to his contention that the appellant was fully drunk at that relevant time, there is no evidence, except perhaps the FIR, which was registered against the appellant. The FIR proves nothing more than an allegation that the claimant was drunk but it proves nothing beyond it and an unsubstantiated allegation has no evidentiary value to prove a point sought to be proved. While it might not be possible for a driver while driving the vehicle to monitor the passengers and their movements, the conductor of the bus definitely has a duty, at least to observe how the passengers conduct themselves in the bus. But the conductor was not examined before the Tribunal, even though the fact remains that it was he who had preferred a complaint before the police, on the basis of which FIR itself was registered. This does not imply, a passenger in a running bus has a liberty to alight from a moving bus and still blame the driver of the bus for his negligence. He being an adult, ought to take reasonable caution and follow such rules as are expected of a passenger of a bus. The appellant himself had to take a slice of the blame himself.

7. I conclude that the appellant's negligence could be safely fixed at 25% as contributing to the accident. Turning to the quantum of compensation awarded by the Tribunal, the appellant obviously had suffered fractures around his knee and the photographs shows loss of tissues above the knee area, due to which he might not be able to squat on the floor and pursue his avocation as a welder. I therefore, fix his functional disability at 40%. The Tribunal has fixed the monthly income

of the appellant at Rs.4,500/-. This Court is not inclined to disturb that. Accordingly, the annual income of the appellant is Rs.54,000/- and a multiplier of 17, which is appropriate to his age, is applied, and the amount awardable on this head is Rs.3,67,200/-[Rs.4500x12x17x40%]. To this, it must be added enhanced compensation of Rs.50,000/- (enhanced from Rs.25,000/-) towards pain and suffering and on other head, the award amount is confirmed. The break-up details of the enhanced award of compensation is as follows :

Heads of compensation	Amount Enhanced (Rs.)
Loss of income (for 6 months)	27,000.00
Transport to hospital	5,000.00
Extra nourishment	5,000.00
Medical expenses	5,000.00
Attender charges	10,000.00
Loss of amenities	10,000.00
Pain and sufferings	50,000.00
Functional disability	3,67,200.00
Total :	4,79,200.00

And as already held, the Transport Corporation is liable only for 75%, which comes to Rs.3,59,400/-.

8. In the result, the appeal is partially allowed and the respondent/Transport Corporation is directed to deposit Rs.3,59,400/-, less if any already deposited, with interest at 7.5% per annum to the appellant/claimant within a period of six weeks from the date of receipt of a copy of this order, whereupon the claimant is permitted to withdraw the same forthwith. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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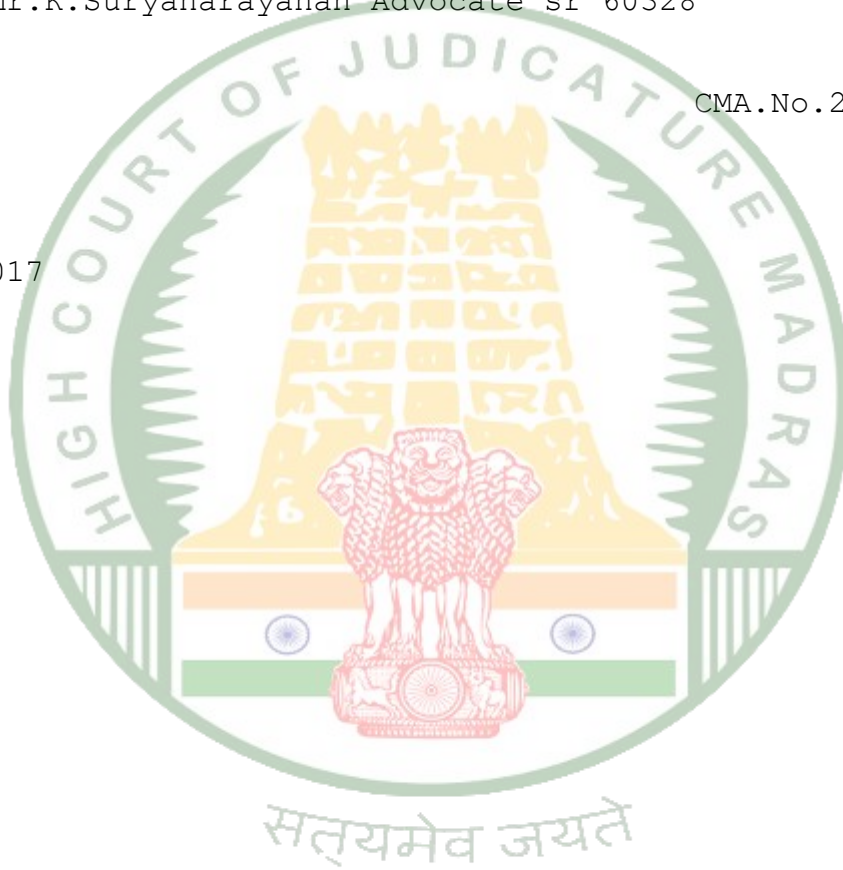
1.The IV Judge,
Motor Accidents Claims Tribunal
Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.K.Suryanarayanan Advocate sr 60328

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