

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 15.12.2016

Judgment Pronounced on :24.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1191 of 2013
and MP.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division No.I, No.37, Mettupalayam Road,
Coimbatore.Appellant/Respondent 3

Vs.

1.K.RaghupathyRespondent 1/Petitioner

2.Kalidoss
Driver,
Tamil Nadu State Transport Corporation Ltd.,
(T.N.S.T.C.) Erode Branch,
Erode District.Respondent 2/ Respondent 1

3.The Managing Director,
Tamil Nadu Express Transport Corporation Ltd.,
Tamil Nadu Division - I,
Thiruvalluvar House,
Pallavan Salai,
Chennai - 2.Respondents 2 Givenup

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.06.2011 made in M.C.O.P.No.110 of 2008 (on the file of the Motor Accidents Claims Tribunal, Additional District Judge (Fast Track Court No.2), Gobichettipalayam.

For Appellant : Mr.Ponram Rajaa
For Respondents : Mr.M.Guruprasad [for R1]
R2 - Given up
R3 - No Appearance

JUDGMENT

The third respondent in MCOP.No.110 of 2010 on the file of the Motor Accidents Claims Tribunal (Additional District Court, Fast Track Court No.II) Gobichettipalayam, has come forward with this appeal challenging the award passed by the Tribunal in an accident where two buses belonging to two different State run Transport Corporations bearing Nos: No.TN01-N-6683 and No.TN38-N-1485 collided owing to which the driver of the bus No:TN01-N-6683 (appellant's driver) died and several passengers of both the buses were injured. The claimant/first respondent herein is a passenger travelling in the other bus belonging to the 3rd respondent herein, and he suffered injury.

2. In the accident, claimant suffered major injuries leading to amputation of his right leg below his knee and also fractures to his left leg. The extent of his disability was assessed by P.W.3, the doctor, who determined his disability of his right leg at 60% and that of the left leg at 20%. The claimant at that relevant time was stated to be 35 years and was working as Store cum Purchase Manager and was said to be earning a monthly salary of Rs.13,000/-. On both heads of pecuniary and general damages, the claimant approached the Tribunal with a claim of Rs.25,00,000/- against which the Tribunal has passed an award for Rs.11,26,161/- with 7.5% interest. Out of the amount awarded, the compensation component relating to permanent disability is Rs.8,32,000/-.

On negligence :

3. Before this Court, the learned counsel for the appellant submitted that it is a case where as per the testimony of P.W.2, the eyewitness of the accident, the Tribunal has entered a finding that the driver of both the vehicles were at fault and therefore the negligence has to be equally apportioned between both the Corporations. On the other hand, the counsel for the third respondent in whose bus the claimant was travelling as a passenger argued that the bus belonging to the appellant was proceeding from west to east and hence its line of motion should have been in northern half of the road whereas it deviated from its track and moved towards the south along which its bus was on motion. It is on the basis of this evidence, the Tribunal has fastened the entire liability on the State Transport Corporation.

4. At the end of the day, except for adjusting the balance sheet, both the Transport Corporations are State run Corporation and therefore, the net liability of the State is not going to be altered in any form. Reverting to the factual aspect on

negligence, it needs to be remembered that the dynamics of no accident can be graphically explained and many a time it is re-created to the extent possible based on factors such as where the accident had taken place, visibility level, weather condition, nature of terrain, mechanical defects if any of the vehicle, driver's conscious level, condition of the road, any intervening circumstances like any person, animal or object interfering with free motion of the vehicle, negligence of other users of road etc., In a head on collision unless it is shown that any of these factors, which are enlisted here only illustratively, has intervened the rule of thumb is to identify who in a given situation had the last if not the best opportunity to avoid an accident. This burden to establish these intervening factors is cast primarily on one who attempts to extricate oneself from liability. It is precisely here the appellant has failed. Hence, I do not find any material to interfere with the finding of the Tribunal on the aspect of negligence.

On quantum :

5. The learned counsel for the claimant would now intervene to submit that keeping everything as a constant, this Court may consider granting the claimant the benefit of future earning in that given the fact he was aged 35 years at the time of accident he would be entitled for 50% increase in income towards future prospects. Before the Tribunal, his income was reckoned at Rs.13,000/-, which was proved based on Ex.P26-salary certificate and this was also acted upon by it and the same continues to remain undisturbed. Therefore, this amount can be reckoned for considering as a base figure in determining the loss of future prospects. Relying on the authority in Govind Yadav Vs New India Insurance Co., [(2011) 10 SCC 683], it was argued that following the principles declared in Arvind Kumar Mishra Vs New India Assurance Ltd., [(2010)10 SCC 254] and Raj Kumar Vs Ajay Kumar [(2011) 1 SCC 343] is declared inviolable by the Apex Court.

6. The Tribunal has determined the permanent disability of the claimant at 50% and this is not disputed. This implies that he is not entirely unfit for pursuing any other avocation. Except in cases where the victim of a road accident is pushed to a vegetative state that his case may be equated to a victim of fatal accident, the principles laid in Raj Kumar Vs Ajay Kumar [(2011) 1 SCC 343] providing for loss of future prospects cannot be followed. Hence, I find that there is no merit in claimant's prayer for seeking compensation for loss of future prospects.

7.In the result, the appeal is dismissed but without costs. The appellant is directed to deposit the amount awarded by the Tribunal with accrued interest, less any amount already deposited within four weeks from the date of receipt of a copy of this order, whereupon the claimant is permitted to withdraw the same forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ds

To

1.The Motor Accidents Claims Tribunal,
Additional District Judge,
(Fast Track Court No.II)
Gobichettipalayam.

+1cc to Mr.Guruprasad, Advocate, S.R.No.12332
+1cc to Mr.Udyakumar, Advocate, S.R.No.12482

EV(CO)
RS(17/03/2017)

CMA.No.1191 of 2013

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