

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3103 of 2009

Achiammal

.. Appellant/Petitioners

Vs.

1.Senthil Kumar

2.N.Ponnusamy

3.United India Insurance Co. Ltd.,

Branch Office,

146-N, Kumar Complex.

Thiruchengode Town,

Namakkal District.

.. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 24.07.2009 in MCOP.No.392 of 2008 passed by the Motor Accident Claims Tribunal (I Additional District Judge (Incharge) & Fast Track Court), Erode.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.T.Ravichandran [for R3]

JUDGMENT

The claimant who suffered fractures to her right leg while alighting from a bus bearing registration No.TN34-T-3288 belonging to the second respondent, driven by the first respondent and insured with the second respondent has come forward with this appeal. For the injuries suffered she approached the Tribunal with a claim of Rs.3,10,000/- and the Tribunal on appreciating the evidence before it fixed Rs.1,17,435/- as the just and fair compensation payable. In the matter of fixing liability on the owner and the insurance company of the bus of which the claimant was a passenger, the Tribunal apportioned the liability equally between the claimant and the owner and the Insurance Company of the bus in equal terms. Accordingly, the total compensation amount receivable by the appellant was reduced by 50%. She therefore has come forward with this appeal challenging (a) the apportionment of liability; (b) seeking enhancement of the compensation awarded.

2. The learned counsel for the appellant argued that the appellant has contended even in her claim petition that her destination was

Erode and at that relevant time some repair/maintenance work was being carried on in the bus stand owing to which the bus did not enter the bus stand, that it was halted some 1000 ft. away from the bus stand, that all the passengers were asked to alight from the bus and that while she was alighting from the bus the first respondent/driver moved the bus consequent to which she fell down and suffered injury. This, she repeats in her examination in chief and the same was not pointedly cross-examined. He also argued that the driver of the bus who speaks to this fact has testified that there was an instruction by the conductor of the bus to the passengers not to alight from the bus but in spite of that the appellant ventured to do so. However, having stated thus he still admitted to his guilt in a criminal case that was registered as concerning the accident involved in the present case. He submitted that the probability in this case tilts towards absolute negligence of the driver of the vehicle and apportioning negligence equally on the appellant is contrary to evidence on record.

2(ii). Turning to quantum aspect, the learned counsel submitted that the Tribunal appeared to have randomly fixed the monthly income of the deceased at Rs.1,500/- which is low going by the general standard of income in 2007. Again it may appear to be a case of simple fracture, but inasmuch as the victim has suffered fracture to her leg and given the fact that she is also a small time flower vendor from unorganised sector, a reasonable enhancement be given with regard to compensation awardable for permanent disability. He added that on the head of pain and suffering the appellant was inadequately compensated. She was hospitalized for 16 days. Still no attendant charges were provided. P.W.2, the doctor has stated that the fracture that the appellant suffered was surgically corrected and plates were fixed. That requires to be removed and this requires a compensation for future medical expenses and this was not provided.

3. Per contra, the learned counsel for the Insurance Company contended that it is an admitted case of the appellant that she had alighted from the bus in a place where there was no bus-stop nor was it a bus stand. This fact itself tilt the scale against her in determining the factum of negligence. In this aspect, the evidence of driver of the bus (R.W.1) is required to be considered. He has deposed that the place where the accident took place was either damaged or was under maintenance and there was a cautioning by the conductor of the bus not to alight, yet the appellant had ignored it and invited the accident on herself. As to the quantum, the learned counsel argued that it is not made clear whether the appellant was a full time flower vendor or a part-time flower vendor and taking that into consideration the Tribunal had fixed the compensation which appears not only just and fair, but also fair and reasonable.

On appellant's negligence :

4. On the aspect of negligence, there is an important aspect which appears to have been overlooked by the Tribunal. Even in her claim petition, the appellant had pleaded that the bus stand at that relevant time was under maintenance owing to which buses used to stop outside the bus stand and the passengers were instructed to alight from the bus outside the bus stand. To an extent this is also admitted by R.W.1, the driver of the bus, who would say that the road at that place was damaged. Curiously enough the appellant as P.W.1 was not even cross-examined on this very aspect. Secondly the driver of the bus (R.W.1) had deposed that he did not even know when and how the accident took place and all that he speaks to was that the conductor had cautioned the passengers from alighting the bus. This would imply the conductor's would be the best evidence for defending the action by the owner or by the insurer of the bus. This conductor, however was not examined. Based on available evidence, this Court inclines to go along with the version of the appellant herein. Consequently, it is held that the driver of the bus is negligent. What adds strength to this finding is the driver of the bus had admitted to his guilt before the criminal court.

5. As to the quantum, while the nature of fracture suffered by the appellant was to her right tibia and fibula, still the doctor as P.W.2. has deposed it would be difficult for her to sit on the floor and to stand-up while engaged in her avocation as a flower merchant and has assessed the disability at 28%. It is a case of a small-time flower vendor who is required to do all sort of menial job and under such circumstances, I deem it appropriate to value the permanent disability at Rs.3,000/- per percentage of disability, and accordingly I enhance the amount awarded by the Tribunal on the head of permanent disability to Rs.84,000/- (3000 x 28%). By applying 2007 standards any person belonging to an unorganised sector can well be presumed to be earning atleast Rs.3,000/- per month and granting a minimum of four months loss of income, the appellant would be entitled to Rs.12,000/-. It is stated that the appellant was in hospital for 16 days and I grant Rs.5,000/- towards attendant charges and towards future medical expenses, I grant Rs.20,000/-, whereas to the other heads, I retain the same that was awarded by the Tribunal. The compensation awarded on various heads as determined by this Court is tabulated below :

Heads	Amount enhanced (Rs.)
Pain and suffering	25,000
Transportation and nourishment	5,000
Medical Expenses	29,785
X-ray Charges	150
Permanent Disability	84,000
Loss of income	12,000
Attendant Charges	5,000
Future medical expenses	20,000
Total	1,80,935

6. In the result, the appeal is allowed and the award amount is enhanced to Rs.1,80,935/-. The entire liability to pay the compensation is fixed on the owner and insurer of the bus (respondents 2 and 3) jointly and severally and they are directed to deposit the enhanced compensation along with interest, less if any already deposited within four months from the date of receipt of a copy of this order and the claimant is entitled to withdraw the same forthwith. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To:

- 1.The Motor Accident Claims Tribunal
I Additional District Judge (Incharge) & Fast Track Court,
Erode.
- 2.The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.T.Ravichandran,Advocate sr.7908(7/4/2017)

+1cc to M/s.R.Nalliappan,Advocate sr.8001(7/4/2017)

C.M.A.No.3103 of 2009

rsi(co)
ss(21/3/2017)