

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.462 of 2012
and M.P.No.1 of 2012 and CMP.No.15240 of 2016

The Managing Director,
T.N.S.T.C.,
Ramakrishna Road,
Salem

... Appellant/2nd Respondent

1.S.Senthil Kumar ...1st Respondents/Petitioner

2.Raj Kumar

(2nd respondent remained exparte before the
Tribunal)

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 25.10.2010 made in M.C.O.P.No.230 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub-Judge, Namakkal.

For Appellant :- No Appearance

For Respondents : Mr.R.Nalliappan for R1

R2- Exparte

J U D G M E N T

(Judgment of this Court was delivered by M.Sathyanarayanan, J.)

The second respondent-Transport Corporation in M.C.O.P.No.230 of 2007 on the file of the Motor Accident Claims Tribunal, Sub-Judge, Namakkal, is the appellant and challenge is made to the findings recorded by the said Tribunal on the issue of negligence and quantum of compensation, by filing this appeal.

2. A perusal of the materials placed would disclose that the respondent/claimant was aged about 27 years and was eking out his livelihood as lorry driver and was earning a sum of Rs.7,000/- per month. The first respondent/claimant, on 16.08.2007, at about 09.15 a.m., was riding his two wheeler

bearing Reg.No.TN-28-L-3558 on the left side of the road and a bus bearing Reg.No.TN-27-N-1421 belonging to the appellant/Transport Corporation came behind, driven by the second respondent/driver and dashed against the two wheeler and as a result, the first respondent/claimant had sustained grievous injuries and he became unconscious and was taken to Maruthi Private Nursing Home, Namakkal and for further and better treatment, got admitted in Gokulam Private Nursing Home, Salem. It is the case of the appellant that he was earning a sum of Rs.7,000/- per month as lorry driver and on account of the accident, he suffered severe disability and as a consequence, he is unable to carry on his normal avocation and therefore, filed the claim petition claiming compensation under the following heads:

Sl.No.	Particulars/Head	Amount (Rs.)
a	Loss of earnings from 16.8.2007	10,50,000
b	Partial Loss of earnings	50,000
c	Transport to Hospital	10,000
d	Extra Nourishment	-
e	Damage to clothing and other articles	-
f	Compensation for continuing / permanent disablement if any	4,00,000
g	Compensation for pain & suffering	40,000
h	Compensation for loss of hearing power	1,00,000
	Total	25,50,000

Though the claimant claimed a sum of Rs.22,50,000/- as compensation, he has restricted his claim to Rs.22,00,000/-.

3.The driver of the appellant/Transport Corporation, who was arrayed as the second respondent in the claim petition, remained exparte. The Transport Corporation has filed a counter statement reputing the allegations and further contended that the criminal case registered by the jurisdictional police has been closed as mistake of fact and as such, the bus driven by the first respondent/driver did not cause the accident and there is no negligence on the part of the respondents and as such, they should be exonerated from compensating the injured claimant. Insofar as the quantum of compensation is concerned, the appellant/Transport Corporation contended that at any rate, it is very excessive and therefore, prays for dismissal of the claim petition.

4. During the course of trial, the claimant examined himself as PW1 and his employer was examined as PW2, the Doctor who assessed the disability was examined as PW3 and the eye-witness to the occurrence was examined as PW4 and Exs.P1 to P16 were marked. On behalf of the appellant/Transport Corporation, the driver of the bus, namely Raj Kumar was examined as RW1 and no witness was marked.

5. The Tribunal, on consideration of the oral and documentary evidence, found that though the criminal case was closed as mistake of fact, the testimonies of the injured/PW1 coupled with the evidence of PW4-eyewitness to the occurrence established the fact that the bus was driven in a rash and negligent manner and as a result, the claimant sustained grievous injuries. Insofar as the quantum of compensation is concerned, the Tribunal, based on the testimony of PW3/Doctor coupled with the physical disability assessed by PW3 under Ex.P15-Disability Certificate, thought fit to award compensation of Rs.14,63,115/- with interest @ 7.5% p.a. from the date of claim petition till the date of full and final settlement. Challenging the findings of the Tribunal on negligence and quantum of compensation, the present appeal has been filed.

6. The learned counsel for the appellant/Transport Corporation is absent.

7. The accident took place during August 2007 and the claim petition was filed in the year 2007 and it was given disposal on 25.10.2010 and the appeal was filed in the year 2012 and it was taken up only in the year 2017 and in the light of long lapse of time, this Court has decided to dispose of the appeal on merits by taking into consideration the impugned judgment and decree as well as based on the entire materials placed before it.

8. The learned counsel appearing for the first respondent/claimant would submit that the Tribunal has appreciated the oral and documentary evidence in proper perspective and taking into consideration the grievous injuries suffered by the first respondent/claimant, has rightly awarded just and fair compensation and this Court, in exercise of its appellate jurisdiction, may not interfere over the well considered judgment and decree passed by the Tribunal and prays for dismissal of this appeal.

9. This Court has considered the submission made by the

and also perused the impugned judgment and decree as well as the original records.

10. The following issues arises for consideration:

(I) Whether the bus belonging to the appellant/Transport Corporation was driven in a rash and negligent manner by the second respondent/claimant?

(II) Whether the quantum of compensation awarded by the Tribunal requires modification?

(III) To what relief, the parties are entitled to?

Issue No.I

11. Immediately after the accident, the Namakkal Police Station has registered a case in Crime No.1132 of 2007 against the driver of the bus, namely Raj Kumar for the offences under Sections 279 and 337 IPC and the F.I.R. was marked as Ex.P1 and after investigation, the case was closed as Mistake of Fact. The appellant/Transport Corporation took a stand that since the criminal case was closed as Mistake of Fact, the fact of rash and negligent driving of the bus by the second respondent/driver has not been established and as such, they are exonerated from paying compensation to the injured/claimant. The Tribunal has taken note of the evidence of PW1 as well as PW4/eyewitness and found that their testimonies with regard to rash and negligent driving by driver Raj Kumar corroborate with material particulars. The Tribunal has also applied the ratio laid down by this Court in The New India Assurance Co. Limited, Coimbatore v. Manimaran and Jegannathan [2008 (2) TNMAC 137] wherein it has been held that simply because the criminal case has been closed as mistake of fact, it cannot lead to the inference that the driver of the offending vehicle is not responsible for the accident and taking into consideration the testimonies of PWs.1 and 2, the Tribunal has reached the conclusion that the bus was driver in a rash and negligent manner and dashed against the two wheeler driven by the first respondent/claimant and as a consequence, he sustained grievous injuries. In the considered opinion of the Court, the said finding recorded by the Tribunal is based on the careful scrutiny and appreciation of the testimonies and therefore, Issue No.I is answered in negative against the appellant/Transport Corporation.

12. The first respondent/claimant, immediately after the accident, was admitted in Maruthi Hospital, Namakkal and thereafter, shifted to Gokulam Nursing Home, Salem and undergone treatment. The said hospital had issued Ex.P6- Discharge Summary dated 16.11.2007 and as per Ex.P6, diagnosis was Avulsion Injury - Scrotum Perineum involving the anal sphinctress extending through right Gluteal Region and Skin Subcutan Tissue upto to Thoracic Spine. The first respondent/claimant had also sustained Pelvic Fracture, Abrasion Right Fore Head, Pelvic External Fixator, Bilateral Tibial Pin Traction, Debridement of Scorotum, Testis and Perineal wound followed by implantnation of tests in thigh, Laparotomy & Sigmoid Colostomy, Multiple wound Debridement & Dressing of Perineal & Back Wound, Reconstruction of Gluteal & Back Wound and he underwent multiple procedure as mentioned above. As per Ex.P6-Discharge Summary, the respondent/claimant was admitted on 16.08.2007 and was discharged on 16.11.2007 after undergoing the above said treatment. PW3- Dr.M.Sivakumar, Orthopaedic Surgeon attached to M.M. Hospital, Namakkal had examined the injured and issued Ex.P15- Disability Certificate dated 07.03.2010 and he opined that due to the injuries and procedures undergone, the claimant cannot squat, sit cross-legged, claim stairs and he limps while walking and he cannot drive any vehicle and his activities of daily living is affected and cannot do any handwork and he is dependent on others and he is not passing his stools normally in anatomical way and therefore, found Orthopaedic fractures - 40% disability and Gastrointestinal disability - 30% and assessed the total disability at 70% and also indicated in Ex.P15 that the disability was calculated according to the disability guide issued by National Institute for Orthopaedic handicaps. The testimony of PW2 in the chief examination is in consonance with Ex.P15 and nothing useful was elicited during cross examination. The Tribunal, taking into consideration Ex.P15 coupled with the evidence of PW3, has reached the conclusion that the first respondent/claimant suffered disability of 70%.

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13. Insofar as loss of income is concerned, the first respondent/claimant was earning a sum of Rs.10,000/- per month as per Ex.P14-Salary Bill. The Tribunal has recorded the fact that the contents of the said exhibit have not been seriously disputed by the appellant/Transport Corporation and taking into consideration of the plea made by the claimant that he was earning a sum of Rs.7,000/- as driver, has fixed at Rs.7,000/- per month and this Court is of the view that the said finding does not warrant interference.

14. Insofar as medical expenses are concerned, the Tribunal has awarded Rs.2,83,515/- and since the said findings are backed by exhibits, it does not warrant interference. The Tribunal has awarded a sum of Rs.41,200/- towards transportation charges by taking into consideration the period of his treatment as in-patient and subsequent treatments, Rs.50,000/- towards Future Prospects, Rs.5,000/- towards Food and Nourishment and Rs.25,000/- towards pain and suffering and totally awarded a sum of Rs.14,63,115/-

15. The evidence of the Doctor-PW3 coupled with the Disability Certificate-Ex.P15 would indicate that the first respondent/claimant cannot carry on his normal avocation and he has to live with the help and aid of others and taking into consideration of the same, the Tribunal has rightly awarded Rs.14,63,115/- with interest @ 7.5% p.a. from the date of claim petition till the date of full and final settlement. In the considered opinion of the Court, the quantum of compensation awarded by the Tribunal is just and fair considering the serious disability suffered by the first respondent/claimant and does not warrant interference. Therefore, Issue Nos.I and II are answered accordingly.

16. This Court, while entertaining the appeal, has granted interim orders dated 03.04.2012 directing the appellant/transport Corporation to deposit the entire compensation awarded, to the credit of M.C.O.P.No.230 of 2007 before the Motor Accident Claims Tribunal, Sub-Court, Namakkal and it is the submission of the learned counsel appearing for the first respondent/claimant that the appellant/Transport Corporation did not comply with the said order.

17. In the light of the reasons assigned above, this appeal lacks merit.

18. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the judgment and decree dated 25.10.2010 made in M.C.O.P.No.230/2007 passed by the Motor Accident Claims Tribunal, Sub-Court, Namakkal. The appellant/Transport Corporation is directed to deposit the compensation awarded by the Tribunal with accrued interest upto the date of settlement, within a period of eight weeks from the date of receipt of a copy of this order, failing

which, they will have to pay interest at 12% p.a. and upon such deposit, the first respondent/claimant is entitled to withdraw the entire compensation by moving appropriate application before the Tribunal and in the event of not depositing the compensation, the first respondent/claimant is also at liberty to levy execution and recovery the compensation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

jvm

To

1.Motor Accident Claims Tribunal/
Sub-Court, Namakkal.

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

+1cc to M/s.R.Nalliyappan,Advocate sr.9871

C.M.A.No.462 of 2012

cnr(co)
ss(15/3/2017)



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