

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No. 2855 of 2017

The Managing Director,
Tamil Nadu State Transport Corpn.Ltd.,
12, Ramakrishna Road,
Salem - 7.

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Appellant/Respondent

/Vs/

Pappathi ..

Respondent/Claimant

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.07.2001 made in M.C.O.P.No.352 of 1999 on the file of the Motor Accidents Claims Tribunal, (Sub - Court), Namakkal.

For Appellant : Mr.T.Chandrasekaran
(No appearance)

JUDGMENT

In respect of the accident, which took place on 04.07.1998 at about 3.00p.m. at Palayapalayam, 7km south-east of Sendamangalam Police Station, the claimant Pappathi suffered injuries. The claimant was aged 50 years, doing coolie work and earning a sum of Rs.3,000/- per month. While travelling in the appellant transport corporation bus, due to the rash and negligent driving, she rolled down inside the bus and sustained injuries. She was admitted in Government hospital, Namakkal and thereafter, she took treatment as an outpatient in the same hospital.

2. According to the claimant, she spent more than Rs.10,000/- towards medical expenses and she has been permanently disabled from doing work which she was capable of doing prior to the accident. According to the claimant, while she was travelling in the appellant corporation bus (route No.19) from Muthakkapatti to Pudukottai, the driver drove the bus in a rash and negligent manner and without applying brakes, ran over the speed breaker, due to which the claimant fell down from her seat and sustained grievous injuries. Claiming that she

is entitled to compensation of Rs.3,00,000/-, she filed the claim petition in M.C.O.P.No.352 of 1999.

3. The transport corporation has disputed the liability on the ground that there was no proof filed by the claimant with regard to her age, income and permanent disablement. The alleged accident was not on account of rash and negligent driving on the part of the driver of the bus. The injured sustained injuries only on account of her own negligence in sleeping in the bus at the time of occurrence. When the claimant herself is a tort-feasor, she is not entitled to claim any compensation from the appellant.

4. It is admitted by the respondent that the claimant was travelling in the transport corporation bus and that, at the time of accident, she was occupying the last seat in the bus.

5. The only issue that arises for consideration is whether the accident was on account of the negligence of the claimant herself or on account of the rash and negligent driving on the part of the driver of the appellant transport corporation bus.

6. Before the tribunal, on the side of the claimant, four witnesses have been examined and on behalf of the respondent one Sulthan Basha has been examined. Admittedly, the date of the accident is on 04.07.1998. There has been delay in the claimant getting herself admitted in Government Hospital, Namakkal. She has been admitted only on 11.07.1998 i.e. one week after the accident. On behalf of the claimant, two witnesses have been examined to support her case that the accident was on account of the negligence on the part of the driver. One witness has gone to the extent of saying that he only took the injured to her house.

7. The Doctor has spoken about the details of fracture suffered by the claimant in the leg and the consequential surgery performed on her. The Doctor has deposed that there had been shortening of leg to the extent of 1 cm and there is loss of strength also. The claimant faces difficulty while walking for a long distance and also experiences difficulty in carrying heavy objects. The disablement has been assessed at 30%.

8. Despite all the above evidence, the Tribunal has passed an award only on two grounds viz., pain and sufferings at Rs.10,000/- and permanent disablement at Rs.58,500/-.

9. The Tribunal, fixing the notional annual income of the claimant at Rs.15,000/- and fixing the age of the claimant at 50 years while adopting multiplier of 13 for 30% disability has quantified the total loss of earning capacity.

10. A perusal of the award reveals that the Tribunal, after giving a finding that the accident was only on account of the rash and negligent driving on the part of the appellant corporation bus, has granted the award payable by the appellant corporation in favour of the claimant.

11. The learned counsel for the appellant contended that when there is delay in going to the hospital and there is delay in preferring the police complaint, the allegation of negligence as alleged by the claimant should not have been accepted.

12. The fact remains that the accident is not disputed but the manner of the accident alone is disputed. Therefore, delay in filing the complaint would not in any way affect the probabilities of the case. It is the case of the appellant that the claimant, while travelling in the bus was sleeping and that she fell down inside the bus and as such negligence is on the part of the claimant herself. But the fact remains that the independent witnesses examined on the side of the claimant has spoken about the way in which the bus was driven leading to the accident. Therefore, the plea of the appellant that there is no negligence on the part of the driver of the bus, in the absence of any evidence on its side, deserves to be rejected.

13. In so far as the quantum of compensation also, there is no acceptable ground to reduce the quantum of compensation. It is relevant to point out that no compensation has been granted towards transport expenses, extra nourishment, loss of income for the treatment period, loss of enjoyment of amenities, medical expenses and attender charges. When the compensation has not been considered on those heads, the meager amount of compensation awarded cannot be said to be excessive or disproportionate.

14. Furthermore, the compensation awarded by the Tribunal is only a sum of Rs.68,500/-, which does not appear to be excessive even in the year 2001. Therefore, the compensation awarded is hardly adequate in the face of spiraling inflation and surge in cost of living. Inflation is naturally compounding, and a relentless destroyer of the value of money. The same is supported by the decision of the Hon'ble Supreme Court in the case of *Rathi Menon v. Union of India* 2001 (2) KLT 12: (2001 AIR SCW 1074), wherein it has been held that while considering the value of money etc., compensation shall be payable on the basis of rules prevailing at the time of making the final order for payment of compensation and not on the money value which prevailed on the date of accident.

14. For the reasons aforesaid, the civil miscellaneous appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. The appellant/Transport Corporation is directed to deposit the entire award amount along with 9% interest from the date of petition till the date of deposit and costs, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sms/GLN

To

1.The Sub Judge,
The Motor Accidents Claims Tribunal,
Namakkal.

C.M.A.No. 2855 of 2017

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nr 21/05/2018

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