

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1124 of 2018
and CMP.No.9213 of 2018

The Managing Director
Tamil Nadu State Transport
Corporation Kumbakonam Limited
Periyamilaguparai, Trichy-1 ..Appellant/Respondent

VS

V.Ramesh ..Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.08.2017 made in MCOP.No.17 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur.

For appellant : : Mr.D.Venkatachalam
for Respondent/Caveator : : Mr.T.Gobinath

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Transport Corporation, challenging the judgment and decree dated 29.08.2017 made in MCOP.No.17 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 12.08.2015, at about 9.10 a.m., while the petitioner was riding his two wheeler bearing Reg.No.TN-48-V-2304 in the Trichy-Salem Main Road, on the extreme left side of the road, while going near Thiruvashi bus stop, the respondent bus bearing Reg.No.TN-45-N-2571 which was proceeding in the opposite direction came at high speed, driven in a rash and negligent manner, dashed against the two wheeler which the petitioner was riding causing him multiple fracture and severe grievous injuries all over the body. The Petitioner underwent treatment at various hospitals incurring expenses of Rs.3,00,000/- and suffered total permanent

disability. At the time of the accident, he was aged 48 years and by working as a Teacher in a Panchayat Union Primary School, was earning Rs.48,000/- per month. Due to the injury he is not able to do his normal work. The Petitioner also needs money towards future medical expenses. Thus, the Petitioner sought a sum of Rs.20,00,000/- as compensation from the respondent-Transport Corporation.

3. On the other hand, opposing the claim of the Petitioner by filing counter, the respondent-Transport Corporation denied and disputed the claim of the Petitioner about the nature of accident. It is stated that on 12.08.2015 while the respondent bus was proceeding at normal speed, in its regular trip, from Ayyampalayam to Chathiram bus stand at about 09.10 a.m., when the bus was near Thiruvasi bus stop, the driver saw a motor cyclist coming from the opposite side by overtaking a bus, keeping to the wrong side. On seeing this, the respondent driver sounded horn, switched on and off the head lights of the bus and alerted the motor cyclist. In spite of the warnings of the respondent driver, the motor cyclist proceeded in the same manner in a rash and negligent manner by keeping to the wrong side. Hence, the respondent driver applied brake and stopped the bus on the left extreme of the mud road, but the motor cyclist who rode the motor cycle in a careless manner dashed against the front right side corner of the just stopped respondent bus. There was no fault on the respondent bus driver and the accident occurred only due to rash and negligent driving by the Petitioner himself. The respondent is not liable to pay any compensation. The Petitioner did not possess valid driving licence. The claim of the Petitioner about his age, avocation and income are disputed. The amount claimed by the Petitioner is exorbitant. Thus the respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 to P.W.3 produced documents Ex.P.1 to Ex.P.16 to prove his claim. On the side of the respondent, R.W.1 was examined but no document was produced. The Tribunal, on the basis of available evidence on record, found negligence of the respondent bus driver alone caused the accident, passed award for a sum of Rs.11,12,246/- payable by the respondent. Aggrieved over the said finding of the Tribunal, the respondent-Transport Corporation has come forward with the present appeal.

5. Heard both sides.

6. The learned counsel for the appellant-Transport Corporation contends that the Tribunal failed to appreciate the evidence on record properly and totally relied upon interested evidence of P.W.1 and the contents of Ex.P.1-FIR registered on the basis of false complaint given by the Petitioner. The Tribunal ought to have fixed contributory negligence on the

petitioner himself. The tribunal fixed the disability of the Petitioner at 50% and the same is on the higher side. There is nothing on record to show that the Petitioner is suffering from any functional disability. The Tribunal ought not to have adopted multiplier method. The Tribunal also fixed income on the higher side. The learned counsel thus sought for entertaining the appeal and to set aside the award passed by the Tribunal.

7. Per contra, the learned counsel for the Petitioner/injured contended that the Tribunal has rightly analysed the materials available on record and fixed disability and adopted multiplier to compensate the damage suffered by him.

There is no ground made out by the Appellant--Transport Corporation to set aside the award passed by the Tribunal. Thus the Injured Petitioner/respondent sought for dismissal of the appeal.

8. The Petitioner contends that on 12.08.2015, at about 9.10 a.m., while he was riding his two wheeler bearing Reg.No.TN-48-V-2304 in Trichy-Salem Main Road, on the extreme left side of the road, while going near Thiruvasi bus stop, the respondent bus bearing Reg.No.TN-45-N-2571 which was proceeding in the opposite direction came at high speed, driven in a rash and negligent manner, dashed against his two wheeler. The accident occurred only due to negligence of the Transport Corporation bus driver.

9. On the other hand, the driver of the Transport Corporation bus who deposed as R.W.1 stated that while going towards Salem, on 12.08.2015, while the respondent bus was proceeding from Ayyampalayam to Chathiram bus stand, when the bus was near Thiruvasi bus stop, the motor cyclist dashed against the front right side corner of the just stopped bus, resulting in the accident. Thus R.W.1 stated that only due to negligence of the Petitioner, the accident occurred.

10. The Petitioner produced copy of FIR registered by Police as Ex.P.1. It is relevant to note that the driver of the respondent-Transport corporation bus while deposing as R.W.1 admitted in his cross examination that the Police registered case against him only.

11. In such circumstances, if the version of the accident as stated by R.W.1 is true, he would have lodged a complaint with the Police. However, no reason is adduced by R.W.1 for failure to lodge any complaint with the Police. On the other hand, P.W.1 clearly stated that the Police registered case against R.W.1 only. In such circumstances, considering the evidence of P.W.1 and contents of Ex.P.1-FIR, it is apparent that the accident occurred only due to negligence of the respondent-

Transport Corporation driver. The conclusion arrived at by the Tribunal in that regard is just and proper and the same needs no interference.

12. The Petitioner claims that in the accident, he suffered the following injuries:-

"Communitated fracture both bones in right leg with lateral tibial condyle fracture right knee and communitated fracture in right leg patella and chip fracture 5th metatarsal neck in right leg foot, fracture in right hand wrist lunate bone, fracture lateral part of right side chest 4th rib, fracture medial and right clavicle bone, lacerated and crushed wound on antero lateral aspect of lower third right thigh and knee, lacerated would anterior aspect of middle third right leg and right foot, lacerated wound over right tendoachilles region and sustained multiple grievous injuries all over the body."

13. The Petitioner is stated to have taken initial treatment at Atlas Hospital, Trichy and thereafter at Gitanjali Medical Centre, Trichy as inpatient from 12.08.2015 to 12.09.2015. The Petitioner produced Wound certificate and discharge summary from Gitanjali Hospital as Ex.P.2 and Ex.P.3 respectively. The Photo and CD is produced as Ex.P.5. According to P.W.2 Doctor, he examined the Petitioner and took X-ray to assess the disability suffered by him and assessed 50% disability. The Petitioner also produced Ex.P.11-Handicap Certificate issued by Medical Board Trichy. It is clear from Ex.P.11 and Ex.P.12 Disability Certificate and Ex.P.13-X ray that the petitioner suffered 50% permanent disability. There is no contra evidence let in by the respondent regarding the nature of physical injuries suffered by the Petitioner. Considering the same, the Tribunal is justified in accepting P.W.2 evidence and Ex.P.11 and Ex.P.12-Disability Certificate in fixing the disability suffered by the Petitioner at 50%. The Tribunal pointed out that in view of the injury suffered and the consequent disability, it will be appropriate to apply multiplier to compensate the damage caused. The said point is refuted by the Appellant-Transport Corporation stating there is no evidence to prove any functional disability suffered by the Petitioner and as such, the Tribunal is not correct in adopting multiplier method.

14. Admittedly, the Petitioner was employed as a Teacher in Neyveli Panchayat Union Primary School , earning monthly salary of Rs.48,000/-. In support of the same, the Petitioner produced Ex.P.6-details of Bank account, Ex.P.7-Adhar card and Ex.P.8-Pancard copy. However, there is nothing on record to show that

the Petitioner continues to be on leave and is unable to carry on his avocation due to the damage suffered by him in the accident. Further, there is no material on record to show that the petitioner suffered loss of income in his professional career. Further, P.W.3/doctor is not the person who gave treatment to the petitioner. Therefore, this court is of the view that there is nothing on record to show that the petitioner has suffered any functional disability or loss of income or his earning capacity is affected due to the accident. As such, the Tribunal is not justified in adopting multiplier method to compensate the petitioner for the disability suffered by him. However, keeping in mind the injuries suffered by the Petitioner and the resultant 50% disability, it will be appropriate to compensate him at the rate of Rs.3000/- per percentage of disability. Accordingly, $\text{Rs.3000} \times 50\% = \text{Rs.1,50,000/-}$ is awarded as compensation under the head "disability".

15. The Petitioner is stated to have incurred heavy medical expenses and produced medical bills as Ex.P.10 and Ex.P.16. The staff of Gitanjali hospital who deposed as P.W.3 stated that the petitioner took treatment in their hospital and produced medical bills as well as discharge summary as Ex.P.14 to Ex.P.16. The Tribunal taking into consideration the above bills, provided Rs.5,84,246/- towards medical bills and the same is just and proper.

16. As stated above, the Petitioner has suffered multiple fracture and grievous injuries and undergone treatment as inpatient from 12.08.2015 to 12.09.2015 at Gitanjali Hospital . As such, he would have suffered Pain and Suffering and therefore, it will be appropriate to provide Rs.50,000/- instead of Rs.40,000/- as compensation for the same. The Petitioner claims that he is unable to sit down and finds difficulty in climbing staircase and also in driving two wheeler. The Petitioner has suffered multiple grievous injuries all over the body. Thus, it will be appropriate to award Rs.50,000/- towards loss of amenities. Considering the fact that the Petitioner took treatment as inpatient for nearly one month and also as outpatient for some time, it will be appropriate to award Rs.30,000/- towards Attender charges as he would have required an Attender to support him. Further, considering the nature of injury suffered and the period of treatment, it will be appropriate to award Rs.20,000/- towards Nutritious Food and Rs.10,000/- towards Transport Expenses. Accordingly, the modified compensation is as below:-

Sl.No	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (RS.)
1.	Disability	4,68,000	1,50,000/-
2.	Medical expenses	5,84,246	5,84,246/-
3.	Pain and suffering	40,000	50,000/-
4.	Loss of amenities	---	50,000/-
5.	Attender charges	---	30,000/-
6.	Nutritious food	10,000	20,000/-
7.	Transport expenses -	10,000	10,000/-
	Total =	11,12,246/-	8,94,246/-.

13. In the result,

- (i) This Civil Miscellaneous Appeal is Partly Allowed;
(ii) The award amount is reduced to Rs.8,94,246/- from 11,12,246/-
(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
(iv) The Appellant/Transport Corporation is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.
(v) The injured respondent is entitled to withdraw the award amount along with accrued interest on filing proper application before the Tribunal. The Tribunal shall pass necessary orders for disbursement of the award amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri
To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Perambalur.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.37975
+1cc to Mr.T.Gobinath, Advocate, S.R.No.36854

C.M.A.No.1124 of 2018

KJ(CO)
CS/16/08/18