

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2018

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.1048 of 2005

and

CMP.No.5987 of 2005

The Managing Director,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Salem - 636 007.

... Appellant/1st Respondent

Vs.

1.Kanthamani

...1st Respondent/Petitioner

2.G.N.Anand Babu

3.The National Insurance Company Ltd.,

Branch Office Indupoor,

Andhrapradesh.

...2nd & 3rd Respondents/

2nd & 3rd Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 07.01.2004 made in M.C.O.P.No.265/2002 on the file of Motor Accident Claims Tribunal, (Sub Court) Krishnagiri.

For Appellant : Mr.V.Ramesh

For Respondents : Mr.M.Selvam, for R1

for Mr.T.Pappiah Dharmarajan

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree passed in M.C.O.P.No.265/2002 dated 07.01.2004 on the file of Motor Accident Claims Tribunal, (Sub Court) Krishnagiri.

2.On 18.12.1999, when the petitioner was traveling in the Corporation Bus bearing Registration No.TN 27 0588, proceeding to salem, the driver of the said bus has driven the bus in a rash and negligent manner and dashed against the lorry bearing Registration No.KA 40 5500, which came in the opposite direction. Due to the said accident, the petitioner sustained severe injuries in her lips, nose and fracture injuries in the nostrils. The petitioner was also given treatment and inspite of treatment she is suffering from disability and also incurred medical expanses and other related expenses and inconvenience due to the accident. Hence, the petitioner claimed a sum of Rs.1,00,000/- as compensation.

3.The first respondent in the counter statement denied the mode of accident as stated in the claim application. It is stated by the respondent that the accident took place only because of the rash and negligent act on the part of the driver of the lorry and the sum claimed by the claimant at Rs.1,00,000/- as compensation is also stated as highly excessive.

4.The Tribunal after analyzing the evidence and documents placed before the same, has given a finding that the accident occurred only due to the rash and negligent manner on the part of the driver of the Transport Corporation. Whereas, on the side of the respondent, it is stated that, it is only the lorry driver who had driven the same in a rash and negligent manner and caused the accident. The tribunal has also determined the compensation based on the evidence and documents, nature of injury, for treatment, loss of income and the medical expanses incurred by the claimant and awarded a sum of Rs.76,218/- as compensation. Aggrieved against the award, the Transport Corporation has preferred this appeal.

5.In the grounds of the appeal, the appellant has stated that there is no negligent driving on the part of the appellant. The tribunal relied upon Ex.A1 without examining the document, which is not proper. The tribunal has also not considered the evidence of RW1 and RW2 and in the absence of any other clear evidence, the finding of the tribunal by fixing the liability of negligence on the part of the first respondent is not proper. The sum arrived by the tribunal as compensation is without any documentary evidence and against the principles laid down in the relevant cases is also highly excessive. The sum awarded under various heads is on the higher side.

6.The learned counsel for the appellant has also argued that there cannot be any rash and negligent driving on the part of the driver of the Corporation bus, when it was proceeding with passengers. Hence, the finding of the tribunal on the aspect of the negligence is totally denied. However, it is observed that the eye witness as well as the co-passengers, who travelled in the bus has spoken clearly before the tribunal that the accident occurred only due to rash and negligent manner on the part of the driver of the bus. Hence, the finding of the tribunal, in view of the evidence and also the other eye witness who has also deposed the fact that it is the negligence on the part of the driver, is very much appropriate.

7.With regard to the sum calculated by the tribunal as compensation, it is clear from Ex.P6 that the injuries sustained by the petitioner have been mentioned in Ex.P6. On perusal Ex.P6, the Tribunal observed that the claimant has sustained two

injuries, which includes one grievous injury. It is also mentioned that the claimant has also lost one tooth and also one tooth got broken. The injured person sustained injury in her nose and she was also under treatment for 8 to 9 days and because of the injured nostrils bone, she is suffering from headache and other inconvenience, hence the doctor assessed the disability at 35%. Ex.P8 is the disability certificate. Hence, the sum awarded by the tribunal for the loss of income at Rs.39,000/- by fixing Rs.1,000/- as monthly income and by applying multiplier 13 and taking 25% disability is very much proper. Likewise, the sum awarded under other heads viz., grievous injury, pain and sufferings, nourishment and medical expenses are also found reasonable and proper, which does not require any interference.

8. In the result, the judgment and decree passed by the Tribunal is confirmed as ordered by the Tribunal. The civil miscellaneous appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

9. Accordingly, the appellant/Transport Corporation is directed to deposit the entire award amount, in respect of above Appeal as per the order of this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Sub Court) Krishnagiri.

Copy To: The Section Officer, V.R. Section,
High Court of Madras.

AKM/19.09.19/3P-3C /

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