

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.1838 of 2006
and
CMP No.8446 of 2006

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram. Appellant

Versus

1. Venkatesan
2. A. Balasundaram
3. The Oriental Insurance Co., Ltd.,
Branch Office,
Vellore. Respondents

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.08.2005 made in M.C.O.P.No.284 of 2003 on the file of the Motor Accident Claims Tribunal, (Principal Sub-Judge), Villupuram.

For Appellant : Mr. P.G.Padmanabhan

For 1st Respondent : No Appearance

For 2nd Respondent : Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 03.08.2005 made in M.C.O.P.No.284 of 2003 on the file of the Motor Accident Claims Tribunal, (Principal Sub-Judge), Villupuram.

2. The facts of the case are as follows :

On 18.11.2002 at about 7.15 p.m., when the petitioner was boarding in the 1st respondent's bus bearing Registration No.TN

32 N 1566 at Villupuram, the said bus was proceeding from North to South, driven by its driver in a rash and negligent manner and dashed against the passenger in vehicle bearing the Reg. No.PY 01 N 0405. As a result, passengers traveled in both the vehicles have sustained injuries. The petitioner is one among them who sustained multiple and serious injuries all over the body. Hence, the petitioner claimed the compensation of Rs.1,45,000/- against the respondents.

3. The first respondent in the counter statement has denied the averments made by the claimant by stating that the accident had occurred due to the bus which came in the opposite direction bearing Reg. No.PY 01 T 0405 without observing the traffic rules, it is the vehicle bearing Registration No.TN 32 N 1566, Route No.177 was proceeding from Chennai to Kallakurichi near Chinthamani, driven by its driver in a rash and negligent manner by overtaking the lorry and hit against the respondent bus which was driven in a minimum speed. Hence, the respondent disowned the negligent driving on the part of the driver of the bus.

4.The second respondent was set exparte before the Tribunal.

5. The Tribunal, after analyzing the evidence and documents placed before it, has given a fair finding that both the vehicles and drivers are responsible for the accident. Hence fixed 50% liability on the first respondent and the remaining liability of 50% on the 2nd and 3rd respondents. The Tribunal has also directed the respondents 1 to 3 to pay the said compensation amount of Rs.1,30,190/- jointly or severally.

6. Aggrieved against the said liability and award, the appellant/ Tamilnadu State Transport Corporation who is the 1st respondent before the Tribunal has preferred this appeal.

7. In the grounds of appeal, the appellant has stated that the sum arrived by the Tribunal as monthly income is arbitrary and also the disability taken by the Tribunal at 35% is also on the higher side. Further, the adoption of multiplier for assessing the income is also not justified. When the sum awarded under the head of pain and suffering is also on the higher side. The Medical expenses incurred by the petitioner is also not properly considered and the sum awarded is excessive. On the whole, the award of the Tribunal is very executive and exorbitant.

8. Heard the learned counsel for the appellant and perused the documents available on record. No appearance on behalf of the 1st respondent.

9. On the side of the appellant, it is argued that when the

petitioner/ claimant has sustained only two injuries, one is simple and another is fracture and the treatment was also given in the Government Hospital Pondicherry for the said injuries, the sum arrived by the Tribunal is on the higher side.

10. But, it is seen from the records that the claimant was initially admitted in the Government Hospital, Pondicherry and further he was treated in the Pondicherry Institute of Medical Science of Pondicherry for which, medical bills were furnished before that Tribunal and the same were marked as Ex.A12 to A15. The Discharge Summary issued by P.I.M.S Hospital in favour of the claimant was also filed before the Tribunal as Ex.A16. The said documents clearly reveal the fact that the injured/claimant was treated for the fracture of his right forearm and for the subsequent treatment and bone drafting was also done for the injured/claimant.

11. The appellant has also contended that the disability arrived by the Tribunal is excessive. But, it is observed from the documents that the claimant was a Tractor Mechanic, for which the license Ex.A17 was marked before the Tribunal and he is also working as Assistant under PW2. PW3 is the doctor, who had issued a disability certificate - Ex.A18, which reveals the percentage at 35%. He has also spoken before the Tribunal about the inefficiency of his hand after the accident and being a mechanic, his efficiency in handling the machine has become more difficult. The Tribunal by considering the nature of injury sustained by him and also his occupation as Tractor Mechanic, came to the conclusion that he would have been earned Rs.1,500/- per month. Accordingly, fixed the monthly income of Rs.1,500/- and by applying the multiplier -18 according to his age, and by taking 35% disability calculated the loss of income at Rs.1,13,400/-. This Court is of the view that the sum above arrived is very much reasonable when considering the nature of injury, age, income and occupation of the claimant.

12. It is also seen that the Tribunal has awarded a sum of Rs.5,000/- for the grievous injury and Rs.1,000/- for the simple injury. The sum award for medical expenses at Rs.10,789/- was also based on the documents produced relating to the medical expenses that he had incurred during the treatment at two hospitals. Hence, the total sum determined by the Tribunal at Rs.1,30,190/- is very much reasonable and not on the excessive side as argued by appellant. Since the sum awarded by the Tribunal is very much reasonable and proper, the award of the Tribunal in fixing the liability on this appellant does not require any interference. Accordingly, the same is confirmed.

13. In the result, this Civil Miscellaneous Appeal is

dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

14. Accordingly, the appellant/Transport Corporation is directed to deposit the entire amount awarded by the Tribunal, with interest and costs, 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(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(Principal Sub-Judge),
Villupuram.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.P.G.Padmanabhan, Advocate, Sr.No. 73368

C.M.A. No.1838 of 2006
and
C.M.P.No.8446 of 2006

CSL/22.07.2019

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