

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2777 of 2007

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kancheepuram. Appellant

Versus

Subramaniyan Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and decree dated 28.12.2005 and made in M.A.C.T.O.P.No. 130 of 2002 on the file of the Motor Accidents Claims Tribunal, (Additional Sub-Court), Chengalpattu.

For Appellant : Mr. P.G. Padmanabhan

For Respondent : M/s. Y. Jayanthi Bhaskar

J U D G M E N T

The appellant / State Transport Corporation Limited has come forward with this appeal challenging the Judgment and decree dated 28.12.2005 made in M.A.C.T.O.P.No. 130 of 2002 on the file of the Motor Accidents Claims Tribunal, (Additional Sub-Court), Chengalpattu.

2. The respondent herein has filed the claim petition, claiming a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) as compensation. According to the claimant on 11.06.1994 at about 10.30 am, while he was boarding the bus bearing registration No. TN-23- 0228 at Thiruthani bus stand along with other passengers, the driver of the bus, without noticing the passengers boarding the bus, has suddenly started the bus, as a result of which the claimant's leg got struck in between the wheels and he sustained grievous injuries.

3. According to the claimant, at the time of accident, he was aged about 45 years, working as an agricultural work and power Tiller Driver, earning a sum of Rs.150/- per day. It was also claimed that soon after the accident, he had taken treatment as an in-patient at Government Hospital, Chennai from 11.06.1994 for a period of two months.

4. The claim petition was resisted by the Transport Corporation by contending that on 11.06.1994, the driver of the bus had started the bus slowly from the bus stand. At the time of accident the claimant was in an inebriated condition, due to which, he could not board the bus and due to his own negligence, he fell off from the bus. The bus was started from the bus stand after noticing the passengers boarding it. While so, it cannot be said that the driver of the bus started it negligently, without noticing the claimant boarding the bus. The Transport Corporation also denied as in correct the nature of injuries sustained by the claimant, period of his hospitalisation and his avocation.

5. Before the Tribunal, the claimant examined himself as PW.1 and Dr.Dharmaraj was examined as PW.2 and Ex.P1 to P9 were marked. On behalf of the Transport Corporation neither any witness was examined nor any document marked before the Tribunal. On considering the oral and documentary evidence, the Tribunal held that the accident was caused due to the negligence of the driver of the bus. As regards the quantum of compensation the Tribunal noted the evidence of PW.2 / Dr.Dharmaraj and concluded that claimant sustained injuries on his right leg and his foot was crushed. The Tribunal has also taken note of the age and disability assessed by the Doctor/ PW.2 at 50% and proceeded to award a total sum of Rs.2,10,000/- as compensation, the break-up of which are as follows:

1. Disability	-	Rs.60,000/-
2. Transport Expenses	-	Rs.10,000/-
3. Medical Expenses	-	Rs.30,000/-
4. Pain and Suffering	-	Rs.50,000/-
5. Loss of earning power	-	Rs.60,000/-
Total		Rs.2,10,000/-

6. The learned counsel appearing for the appellant would contend that the Tribunal has awarded an exorbitant amount as compensation to the claimant, without taking note of the earnings of the claimant. The Tribunal proceeded to award a sum of Rs.60,000/- towards loss of earning power in favour of the claimant apart from awarding another sum of Rs.60,000/- towards disability. It is also stated that the disability as assessed by the Doctor at 50% is excessive as the respondent only sustained a fracture injury. In any event the award passed by the Tribunal is not in consonance with the nature of injury sustained by the claimant and the period of his hospitalisation, therefore, he prayed for setting aside the award passed by the Tribunal.

7. The learned counsel for the respondent would contend that even though the appellant/Corporation opposed the claim petition and disputed the nature of injury sustained by the claimant and the period of his hospitalisation, the corporation has not chosen to file any documentary evidence to disprove the same. The Corporation also did not examine any one before the Tribunal. In any event, the respondent has proved the nature of injury sustained by him not only by producing oral and documentary evidence, but by examining PW2, Doctor. According to the counsel for the respondent, the Tribunal, taking note of the documentary evidence filed by the claimant/respondent, has awarded a just and reasonable compensation, which does not call for any interference by this Court.

8. Heard both sides and perused the materials placed on record. It is observed from the claim petition that the claimant underwent treatment for a very long period both at Government Hospital, Chennai and in a private hospital and that has been proved by documents filed by him before the Tribunal. The claim was made by the petitioner is at Rs.5,00,000/- and the Tribunal, taking note of the oral and documentary evidence as a proof of such claim made by the claimant, has awarded compensation under various heads. It is also brought to the notice of this Court that the claimant had underwent two to three surgeries for the injuries sustained by him. It is also seen from the deposition of the claimant, as PW1 that due to the injuries sustained, he cannot walk without the support of the walking stick. Having regard to the same, the Doctor, PW2 had assessed the disability of the claimant at 50%, which, in the opinion of this Court, could be raised to 60%. Resultantly, the amount awarded under the head of disability has to be enhanced to 75,000 from Rs.60,000/- which, in the opinion of this Court, will meet the ends of justice.

9. In view of the above, the award passed by the Tribunal in M.A.C.T.O.P.No. 130 of 2002 on the file of the Motor Accidents Claims Tribunal, (Additional Sub-Court), Chengalpattu is modified and the claimant is entitled to a total compensation of Rs.2,25,000/- as against the sum of Rs.2,10,000/- awarded by the Tribunal. The Appellant / Transport Corporation is directed to deposit the enhanced compensation amount along with interest at the rate of 7.5% per annum to the credit of M.A.C.T.O.P.No. 130 of 2002 on the file of the Motor Accidents Claims Tribunal, (Additional Sub-Court), Chengalpattu, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of this judgment and on such deposit, the claimant is permitted to withdraw the compensation amount. The respondent/claimant is directed to pay the additional court fee for the enhanced award amount.

10. In the result, the Civil Miscellaneous Appeal is disposed of to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions, if any, are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accidents Claims Tribunal,
Additional Sub - Court,
Chengalpattu.
- 2.The Record Clerk,
VR Section,
High Court, Madras.

2ccs M/s. J. Mahalingam, Advocate, Sr. 70043

1 cc to M/s. P.G. Padmanabhan, Advocate, Sr. 69260

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