

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.3085 of 2005
and
C.M.P.No.16039 of 2005

Metropolitan Transport Corporation
Chennai Ltd., represented by its
Managing Director,
Chennai-2.

... Appellant

Versus

D.Ramu

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.07.2003 made in M.C.O.P.No.2654 of 1999 on the file of the Motor Accident Claims Tribunal, (III Judge, Small Causes Court) Chennai.

For Appellant : Mr.S.V.Vasanthakumar

For Respondent: No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 09.07.2003 made in M.C.O.P.No.2654 of 1999 on the file of the Motor Accident Claims Tribunal, (III Judge, Small Causes Court), Chennai.

2. The brief facts of the case leading to the claim application are as follows :-

On 12.07.1998 at about 13.30 hrs, when the petitioner was standing in the MTC bus, the driver of the said bus suddenly started the bus in a rash and negligent manner endangering to the public, due to which, the claimant who was standing in the said bus, fell down and sustained grievous injuries. The accident had occurred only due to the rash and negligent driving

on the part of the driver of the MTC bus. Hence, the petitioner claimed a sum of Rs.1,50,000/- as compensation under various heads.

3. The respondent/Transport Corporation in the counter statement has denied the accident and further stated that the petitioner had only tried to board into the moving bus, when failing in his attempt, had fallen down by his own negligent act and the respondent is not responsible for the act on the part of the appellant. The sum claimed by the petitioner as compensation was very much disputed by the Transport Corporation. The other aspects regarding age, occupation, income, nature of injury and period of treatment are also disputed in the counter statement.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that it is the negligence driving on the part of the driver who was not careful while starting the bus and fixed the liability on the appellant. As against the claim, the Tribunal has awarded a sum of Rs.87,000/- based on the documents and evidence as compensation. Aggrieved against the said award, the respondent/ Transport Corporation has preferred this appeal.

5. In the grounds of appeal, it has been stated that the manner of accident accepted by the Tribunal is not fair. To prove the negligence on the part of the driver, nobody was examined before the Tribunal and the FIR Ex.A4 has not been properly considered by the Tribunal. For arriving the finding that the driver of the MTC bus is responsible for the accident, no eye witness was examined. The further grievance raised in the appeal is that the Tribunal ought to have fixed atleast the contributory negligence on the part of the driver. The compensation is also on the higher side by awarding the sum under various heads.

6. Heard the appellant's side and perused the materials available on record.

7. On a perusal of records and the judgement of the Tribunal, it is observed that the claimant who was examined before the Tribunal has stated that he has suffered two fracture injuries in the right leg and hip and he was taken treatment as inpatient, which was proved before the Tribunal by filing Ex.P1 discharge summary. Further, it is the evidence placed before the Tribunal by the claimant that because of the fracture injuries in the leg, he was unable to drive his vehicle, for which Ex.P5 disability certificate was placed as document. When it is clearly observed that two injuries in the right leg, the disability assessed by PW2, Doctor is at 50%, for which X-ray

was also placed before the Tribunal. Hence, the injuries and the disability sustained by the claimant are also proved by way of examining PW2 and also by document Ex.P5. The Tribunal has taken only a very minimum income of Rs.100/- per day and assessed the loss at Rs.15,000/-. It is also observed that the age of the injured person is 26. Hence, the sum arrived based on the minimum income is very much reasonable. Whereas, the learned counsel for the appellant has argued that in the absence of any other relevant document, the sum awarded for transport expenses, pain and sufferings, nourishment are also on the higher side. But, it is observed that the Tribunal has assessed the medical expenses only at Rs.1000/- , for the pain and sufferings, the sum awarded at Rs.5000/- is also very much reasonable. For the permanent disability assessed by the Doctor at 50% was taken as Rs.50,000/- is not on the higher side. For the loss of earning power, the sum awarded at Rs.15,000/- is very much reasonable when compared to the nature of injury and the disability sustained by the claimant.

8. Therefore, this Court is of the considered view that the sum determined by the Tribunal as compensation at Rs.87,000/- is very much reasonable and does not require any interference. The findings of the Tribunal with regard to liability and quantum and the sum awarded by the Tribunal does not require any interference.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

10. Accordingly, the Appellant/ Transport Corporation is directed to deposit the entire Award amount along with interest as awarded by the Tribunal, if not 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. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(III Judge, Small Causes Court)
Chennai.

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

+1cc to Mr.S.V.Vasantha Kumar, Advocate, SR.No.72862

C.M.A. No.3085 of 2005
and
C.M.P.No.16039 of 2005

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