

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.10.2018

CORAM:

THE HONOURABLE Mrs. JUSTICE S. RAMATHILAGAM

C.M.A.No.3530 of 2005

C.Subramaniam
S/o.Chinnasamy Pillai,
Thirumurugan Saw Mill,
Rayakottai Road,
Hosur Town.

Appellant/Claimant

Versus

1.Karnataka State Transport Corporation Ltd.,
Bangalore Division,
Bangalore Town,
Karnataka State.

2.S.Mahesh

3.New India Assurance Co. Ltd.,
No.346, 2nd Floor,
Manadi Court, 27th Cross
Jaya Nagar, 3rd Block,
Bangalore - 560 011.
Karnataka State

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.12.2004 made in M.A.C.T.O.P.No.24 of 2002 on the file of the Motor Accident Claims Tribunal (Sub Court), Hosur.

For Appellant : Mr.P.Mani

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 28.12.2004 made in M.A.C.T.O.P.No.24 of 2002 on the file of the Motor Accident Claims Tribunal (Sub Court), Hosur.

2. The brief facts of the case are as follows :

On 02.10.2001 at about 4.00 a.m., when the claimant was

traveling as passenger in the Maruthi Van bearing Registration No.KA-25-M-2020 belong to the second respondent and insured with the third respondent and when the said vehicle proceeding in the Banakal-Mudiger Highway Road, a bus, which came in the opposite direction, which belongs to the first respondent bearing Registration No.KA-19-F-1565, driven by its driver in a rash and negligent manner, dashed against the Maruthi Van which was driven by its driver in a slow and conscious manner, due the said accident, the Maruthi Van was smashed and the claimant sustained injuries. The claimant underwent treatment and inspite of treatment he sustained disability and he claimed a sum of Rs.5,00,000/- as compensation.

3. The 3rd respondent/Insurance Company, in the counter statement, has stated that they have not received the copies of the information in respect of the accident. Further, it is stated that since the claimant has admitted the fact that he was traveling in the said Maruthi Van as passenger and the rash and negligent driving was on the part of the driver of the bus which was coming in the opposite direction, the third respondent/Insurance Company is not liable to pay any compensation. The other aspects regarding, the age, income of the claimant are also denied by the Insurance Company.

4. The Tribunal, upon evaluation of pleadings and evidence, has given a finding that both the vehicles are responsible for the said accident, because there was a head on collision between two vehicles and liability fixed at 50% on each vehicle. The Tribunal has awarded a sum of Rs.98,000/- and out of the said amount 50% has to be paid by the first respondent and the remaining 50% has to be paid by the second and third respondents jointly. Aggrieved against the said award, the claimant has preferred this appeal.

5. In the grounds of appeal, it has been stated that the Tribunal has given a finding that both the vehicles are responsible for the accident and the sum claimed by the claimant has to be awarded in full. The other grounds raised in the appeal is that the percentage of the disability given by the Doctor for the nature of injuries sustained by the claimants was not considered. When the disability sustained by the claimant has stated as 60%, the tribunal ought to have awarded a sum of Rs.1,00,000/- towards the disability and awarded the sum towards the medical expenses is also very less, inspite of production of sufficient documents. The Tribunal has also not considered the loss of future earning power by taking into consideration the age of the claimant. Hence, on the whole, the award passed by

the Tribunal was sought to be set aside and the same has to be enhanced.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. On a perusal of the records, it is clear that the claimant was travelled in the Maruthi Van as a passenger and the bus which belonging to the first respondent which came in the opposite direction. It is stated in the claim petition that the driver of the bus came in a rash and negligent manner and hit against the Maruthi Van, in which the claimant travelled as a passenger. The driver of the bus had preferred Criminal case against the driver of the Van in Crime No.57 of 2001. Ex.P1 is the FIR. Both the drivers were not examined before the Tribunal and it is also observed that based on the time and also the place of accident, if the said two vehicles were driven by both the drivers in a careful and conscious manner, because of the rash and negligent driving on the part of both the drivers, the said accident has occurred. It is very much clear from the records that there is a head on collision between the van and bus, hence, the findings arrived by the tribunal by taking into consideration the place and time of the accident that both the drivers are responsible for the accident and fixed the liability at 50% is reasonable and proper. Ex.P3-Wound Certificate, it is observed that there are three grievous injuries and one simple injuries. P.W.2-Doctor was also examined before the Tribunal who assessed the disability at 60%. The claimant at the time of accident was aged 61 years and based on the medical bills, period of treatment underwent by the claimant and the tribunal has observed that there is no loss of earning capacity and awarded a sum of Rs.2,000/- for medical expenses against the claim of Rs.20,000/-, and Rs.4,000/- for nourishment and transport expenses and for the permanent disability Rs.40,000/- and for pain and suffering Rs.32,000/- was awarded hence, the total sum arrived by the tribunal at Rs.98,000/- is very much reasonable.

8. In view of the above, this Court concurs with the findings of the Tribunal, there is no discrepancy in the award and decree. Hence, this Court is not willing to interfere with the quantum of compensation as awarded by the Tribunal. Therefore, this Civil Miscellaneous Appeal is dismissed. No costs.

9. The 3rd respondent/Insurance Company is directed to deposit the award amount as awarded by the tribunal with

interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, if not already paid. 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

lpp

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal
Hosur.

Copy to:

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

+lcc to Mr.P.Mani, Advocate sr.72080

+lcc to Mr.S.Jayasankar, Advocate sr.71984

CMA.No.3530 of 2005

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