

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A. No.448 of 2006

and

C.M.P.No.1546 of 2006

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

Versus

1. Suresh
2. Vimala
3. The Manager,
National Insurance Company
Motor Accidents Claim III Party
No.751, Anna Salai,
Chennai - 2. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed by Additional District Judge, Fast Track Court No.V, Motor Accidents Claims Tribunal, Chengalpattu at Tiruvallur made in M.C.O.P.No.228 of 1998 dated 09.06.2004.

For Appellant : Mr.S.V.Vasanth Kumar

For R3 : Mr.S.Vadivel

For R1 & R2 : Disd on 07.07.2015

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 09.06.2004 made in M.C.O.P.No.228 of 1998 on the file of Additional District Judge, Fast Track Court No.V, Motor Accidents Claims Tribunal, Chengalpattu, Tiruvallur.

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

For the purpose of convenience, the parties are referred to herein as they are ranked before the Tribunal.

3. On 07.06.1998 at about 3.20 p.m the petitioner was travelling in the van bearing Registration No. TN 45 2625, proceeding from Perungalathur to Tambaram. At that time, the first respondent riding his bus bearing Registration No. TN 32-N-0764 in a rash and negligent manner in the opposite direction and dashed against the above said van. Due to which, the petitioner and one Thiru.Srinivasan have sustained grievous injuries. Therefore, the first respondent who is the owner of the bus is liable to pay a compensation to the petitioner. The petitioner claimed a compensation of Rs.4,00,000/- against the appellant/Transport Corporation.

4. Resisting the same, the 1st respondent/Transport Corporation filed a detailed counter stating that the first respondent denied the accident and also the negligent driving on the part of the driver of the bus. Therefore, according to the respondent, the claim of the petitioner should be dismissed. The 3rd respondent has also stated in the counter statement, it is the first respondent bus driver who drove the vehicle in a rash and negligent manner and hit against the van. Regarding other aspects for claiming compensation of Rs.4,00,000/- the details subjected by the petitioner was denied.

5. The Tribunal after analyzing the oral and documentary evidence viz., the nature of the injury, medical expenses and loss of income has awarded a sum of Rs.1,99,363/- as total compensation and had given a finding is that it is the driver of the bus who had driven in the same direction and caused the accident.

6. Aggrieved against the said compensation and the liability fixed by the Tribunal, the appellant/transport corporation has preferred this appeal. The grounds raised in the appeal is that the manner of accident was not properly considered by the Tribunal. It is the van, which was driven in a high speed, thereby crossing the center portion of the road and grazed with the appellant bus, which aspect was not observed by the Tribunal. Accepting the facts and the reliefs made by the Tribunal, without examining the person who has given the complaint is not justified.

7. It is further stated that the Tribunal ought to have fixed the contributory negligence on the part of the driver while taking into consideration of the oral and documentary evidence placed before the Tribunal. Hence, the finding of the Tribunal in respect of the negligence and also quantum of

compensation is liable to be dismissed. Aggrieved against those two aspects, the appellant has preferred this appeal.

8. Heard, Mr.S.V.Vasanth Kumar, learned counsel appearing for the appellant and Mr.S.Vadivel learned counsel appearing for the third respondent and perused the materials available on record.

9. It is observed from the facts of the claim application with regard to the mode of accident, the evidence of the petitioner was placed before the Tribunal. In his evidence, he has stated that when he was travelling in van bearing Registration No. TN 45 2625 from Perungalathur to Tambaram, a Government Bus bearing Registration No.TN 32-N-0764 was coming in the opposite direction in a rash and negligent manner and dashed against the said van and hence the driver of the bus is responsible for the accident. One Manickam has preferred a criminal case regarding the accident, which was also registered by the Inspector of Police, Tambaram Police Station. Ex.P.7 is First Information Report. But the said complainant/Manickam was not examined as witness before the Tribunal, the averments made in the FIR is that it is the Government bus which was coming from Chennai to Chengalpattu in a rash and negligent manner and dashed against the said van, which was coming in the opposite direction.

10. Be that as it may, on the side of the respondents, conductor and driver were examined as R.W.1 and R.W.2. Though, R.W.1 was examined he has deposed that he being a conductor, he cannot witness the accident which occurred outside the bus. But, R.W.2- Driver of the bus has deposed that while he was driving the bus from Chengalpattu towards Thiruvannamalai, a mini lorry bearing Registration No.2625 was overtook the tipper lorry near Irumbuliyur Railway gate and after seeing this he has taken the bus at the extreme left side and thereafter, mini lorry was dashed against his bus and as a result of which, the bus got damaged. But, there is no rough sketch has been produced to prove the said fact as deposed by R.W.2. Accordingly, the oral evidence of R.W.1 and R.W.2 was not considered by the Tribunal.

11. In the absence of any evidence and documents on the side of the respondent and based on the FIR and the evidence of P.W.1, the tribunal has given a finding that the accident occurred only due to the rash and negligent manner on the part of the driver of the bus. In view of the oral and documentary evidence, the contributory negligence on the part of the driver of the van was not proved before the Tribunal. Hence, the finding of the Tribunal in fixing the liability entirely on the driver of the bus is appropriate and justified one.

12. The Tribunal after analyzing the evidence and documents has awarded a sum of Rs.1,99,363/- under various heads as follows:

Heads	Award
Loss of earning for six months	Rs. 9,000/-
Transport Expenses	Rs. 5,000/-
Extra Nourishment	Rs. 2,000/-
Damages Bills	Rs. 1000/-
Medical Expenses	Rs. 11,163/-
Pain and Sufferings	Rs. 10,000/-
Permanent Disability	Rs. 1,00,000/-
Loss of earning power	Rs. 61,200/-
Total	Rs. 1,99,363/-

13. Challenging the compensation awarded as excessive, the Transport corporation has filed this appeal.

14. While coming to the argument of the appellant with regard to the quantum of compensation awarded by the Tribunal is excessive, the disability of the petitioner has not been considered properly and fixing the disability at 80% by the Tribunal is on the higher side.

15. On a perusal of the evidence and documents, it is observed that the petitioner sustained two fracture injuries on the right leg thigh and he was taken to Government Hospital, Chennai and given treatment for six months and during the period of treatment, he underwent two surgeries and thereafter, he took treatment in another Government Hospital for four months wherein, he underwent surgeries twice. It has been further stated that due to the fracture on his right leg, his leg was shortened by 7" inch due to removal of bone by surgery evident from P.W.2 by filing Ex.P.8 is the disability certificate, which says that the disability sustained by the respondent is at 85%. Finding of the Tribunal by considering the disability at 80% is quite reasonable and in view of the taking of the disability at 80%, the sum awarded under the head viz., Disability,

Rs.1,00,000/- is just and fair. Hence, the grievous nature of injury and period of treatment that was taken in two hospital and the surgery underwent by the respondent/petitioner and based on the period of treatment and therefore the income arrived by the Tribunal is quite reasonable one. Hence, the sum awarded by the Tribunal under the loss of earning power at Rs.3,600/- by considering the age of the claimant is also reasonable. Therefore, the finding and the award of the Tribunal cannot be said to be excessive and it is rather more conservative and is liable to be confirmed. Hence, this Court is of the considered view that the said finding of the Tribunal is just and reasonable and accordingly the same is confirmed.

16. Insofar as the compensation under other heads are concerned, considering the nature of injuries, the period of treatment, the nature of treatment and the impact of the injuries not only on the day-to-day life of the claimant, but also on the future life of the claimant, this Court is of the view that the amounts awarded under those heads are just and reasonable and no interference is called for with the award of those amounts. Accordingly, the same is confirmed.

17. Therefore, this Court deems that the Tribunal has awarded a just, fair and reasonable compensation and there is no warrant to interfere with the award passed by the Tribunal on that aspect.

18. In the result, this appeal is dismissed. Consequently connected Miscellaneous Petition is closed. No costs.

19. The appellant/Transport company is directed to deposit the award amount along with interests and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the same directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. It is open to the appellant to recover the compensation from the owner of the vehicle.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dh

To

The Additional District Judge,
Fast Track Court,
No.V, Motor Accidents claims Tribunal,
Chengalpattu, Tiruvallur.

Copy To:

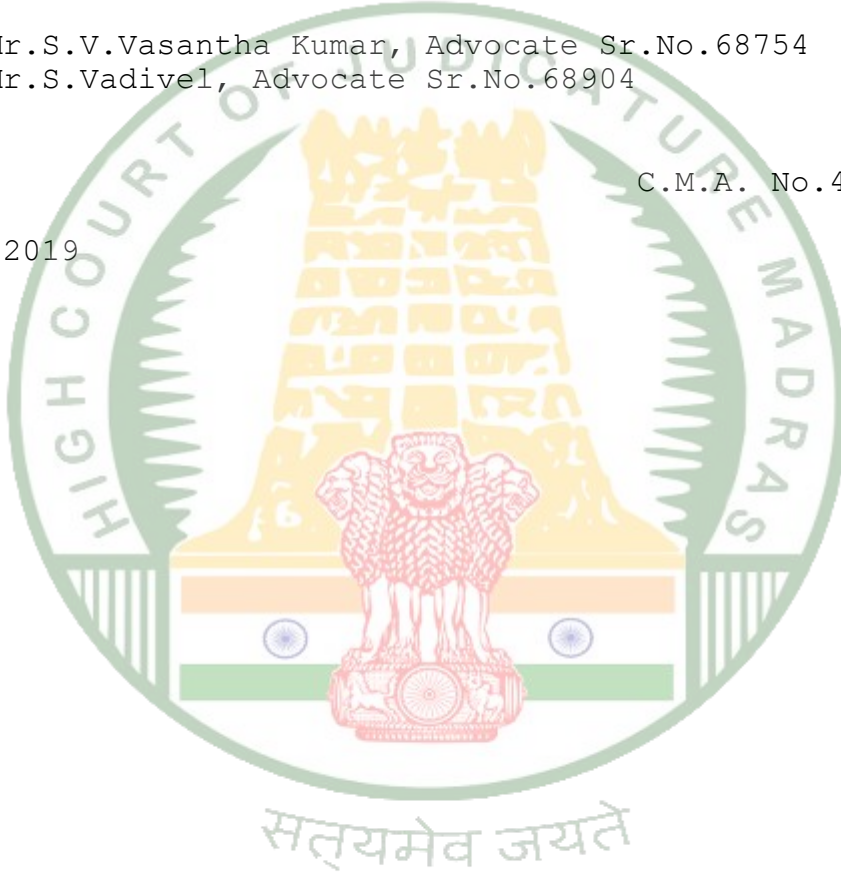
The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.S.V.Vasantha Kumar, Advocate Sr.No.68754

+1 cc to Mr.S.Vadivel, Advocate Sr.No.68904

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SR(CO)
CSL/01.03.2019



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