

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.10.2018

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A. No.451 of 2006

and

C.M.P.Nos.14461 of 2005 & 1549 of 2006

The Managing Director

Tamilnadu State Transport Corporation Ltd.,

Villupuram. □. Appellant

Versus

1. Ramasamy

2. J.Sureshbabu

(2nd respondent is set expate
before the Tribunal)

3. The New India Assurance Co. Ltd.,
Pondicherry. □. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award and decreetal order passed by the Motor Accidents Claims Tribunal (Fast Track Court, Kallakuruchi) and made in MACTOP No.523 of 2003 dated 03.09.2004 praying to set aside the same. For Appellant : Mr.A.Babu

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against judgment and decree dated 03.09.2004 made in MACTOP No.523 of 2003 on the file of Motor Accidents Claims Tribunal (Fast Track Court, Kallakuruchi).

2. The facts of the case are in a nutshell:-

For the purpose of convenience, the parties are referred to herein as they ranked before the Tribunal. On 14.10.2000 at 19.15 Hours while the petitioner was travelling in the third respondent's vehicle bearing Registration No.TN-32/N-0382 and the first respondent driver drove the vehicle bearing Registration No. TN-22/K-4126 in a rash and negligent manner and dashed against the third respondent's vehicle. Due to which, the petitioner had sustained multiple injuries. The petitioner claimed a compensation of Rs.2,00,000/- against the appellant/Transport Corporation for the injuries sustained by him and also for the loss of income.

3. Resisting the same, the third respondent/Transport Corporation filed a detailed counter, stating that the first respondent herein/claimant alone drove the vehicle in a rash and negligent manner and

dashed against the first respondent's vehicle, hence there was no fault on the part of the first respondent's driver. The other aspects regarding age, occupation, monthly income, nature of the alleged injuries and fractures sustained by the first respondent, the period of treatment, medical expenditure and the disability for claiming a sum of Rs.2,00,000/- as compensation is highly excessive. The averments made in the counter is that the claimant has to prove himself that he was a bonafide passenger at the time of accident.

4. The Tribunal after analyzing the oral and documentary evidence placed before it, has given a finding that the accident occurred due to the first and third respondent's drivers and hence fixed the liability at 60% on the driver of the first respondent's vehicle and 40% on the third respondent. The Tribunal has awarded a sum of Rs.1,36,000/- as compensation and hence the first respondent has to pay a sum of Rs.81,840/- and the third respondent has to pay a sum of Rs.54,560/- to the claimant.

5. Aggrieved against the said liability and compensation fixed by the Tribunal, the third respondent/Managing Director, Tamilnadu Transport Corporation Limited has preferred this appeal.

6. Heard, Mr.A.Babu, learned counsel for the appellant and perused the materials available on record.

7. The grounds raised in the appeal is that the First Information Report was registered against the driver of the lorry and hence the Tribunal ought to have dismissed the entire claim application. The further grievance raised in this appeal is fixing the liability on the part of the appellant at 40% when the negligence is on the side of the driver of the tanker lorry as seen in the First Information Report. Further, the appellant has raised objections regarding all the documents relating to medical records that were not examined before the Tribunal and the disability certificate issued by the Doctor, who had not treated the claimant. The tribunal awarded compensation without any proper evidence with regard to the petitioner's age, monthly income. Hence, the finding of the Tribunal by fixing the liability at 60% on the first respondent and 40% on the third respondent bus is ought to have been dismissed.

8. In view of the evidence, the findings given by the Tribunal is quite reasonable and it does not require any interference. While awarding the compensation, the documents placed by the petitioner before the Tribunal are Ex.P.2 is the discharge summary, which reveals the fact that the claimant sustained three injuries and those injuries are grievous in nature. It is also observed that surgery was done to him. The claimant sustained 25% of disability but, he claimed at 30% of disability, Ex.P.7 is the disability certificate. P.W.2, doctor was also examined before the Tribunal, who has deposed about the injuries sustained by the Petitioner.

9. The Tribunal after analyzing the evidence and documents, has awarded a sum of Rs.1,36,400/- as compensation under the various heads as follows:

Heads

Award

Loss of future earnings

Rs. 1,00,000/-

Permanent Disability

Rs. 22,400/-

Medical Expenses

Rs. 10,000/-

Pain and Sufferings

Rs. 2,000/-

Transport Expenses

Rs. 2,000/-

Total

Rs. 1,36,400/-

From the total compensation of Rs.1,36,000/- the tribunal has fixed the 60% of the liability on the first respondent and 40% of the liability on the third respondent.

10. Challenging the compensation and the liability fixed by the Tribunal, the Transport corporation who is the third respondent before the tribunal has filed this appeal.

11. While considering the occupation of the claimant that he is a butcher and his monthly income has been assessed by the tribunal at Rs.2,400/- per month is quite reasonable. At the time of accident, the claimant was aged about 30 years, hence the multiplier 17 was adopted by the tribunal and arrived a compensation towards loss of income as Rs.1,36,400/- by applying 25% disability, which is quite reasonable and the liability fixed on the third respondent at 40% is also appropriate.

12. On a perusal of the records, it is observed that the injured was examined as P.W.1 before the Tribunal. He has deposed before the Tribunal that while he was travelling in a Government Transport/who is the third respondent before the tribunal bus at about 07.15 p.m between Kallakurichi and Chinna Salem National Highways, at that time the vehicle belonging to the first respondent's lorry came in the opposite direction and the said two vehicles were dashed against each other. It is also further stated by the claimant that the accident occurred only due to the rash and negligence on the part of the drivers of both the vehicles viz., bus and tanker lorry, due to which, the claimant has sustained grievous injuries. Ex.P.1, the First Information Report filed before the Tribunal shows that the liability is on the part of driver of tanker lorry. Ex.P.3 Motor Vehicle Report reveals the fact that both the vehicles got damaged. Since the accident had taken place in a National Highway, where the sufficient space is provided for traveling the vehicles, this court is of the view that this accident could have been occurred only due to the negligence on the part of the drivers of the both vehicles. The tribunal has also rightly concluded that only because of the rash and negligence driving on the part of the drivers of the said vehicles, this accident had occurred. Hence, the tribunal has not considered the FIR, which shows that the accident had occurred only due to the negligence on the part of the second respondent herein, who is the driver of the lorry and fixed the liability on both the drivers of the vehicles for the said accident. P.W.1 is the claimant has clearly deposed that both the vehicles dashed against each other, the finding and the consequent award of the Tribunal cannot be said to be excessive and it is rather more conservative and is liable to be confirmed. In such view of the matter, this Court is of the considered view that the said finding is just and reasonable and is accordingly the same is confirmed.

13. Insofar as the compensation under the 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 considered 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.

14. 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.

15. For the reasons aforesaid, this appeal is liable to be dismissed and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

16. Accordingly, the appellant/Transport Corporation is directed to pay the compensation to the first respondent/claimant as awarded by the tribunal, within a period of four weeks from the date of receipt of a copy of this order, if not already paid.

05.10.2018

Index : Yes/No

Speaking/Non speaking order

Internet : Yes/No

dh

To

The Motor Accidents Claims Tribunal
(Fast Track Court, Kallakuruchi)

S. RAMATHILAGAM, J.

dh

C.M.A. No.451 of 2006

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