

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.09.2018

CORAM:

THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1804 of 2010

Jayachandran

...Appellant/Petitioner/ Claimant

Vs

The General Manager,
Tamil Nadu State Transport Corporation,
Trichy - 1.

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order and decretal order passed in M.C.O.P.No.982 of 2005 on 01.02.2010 by the learned Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.S.Balasubramanian

For Respondent : Mr.D.Venkatachalam

JUDGMENT

The instant appeal has been filed by the claimant challenging the Award dated 01.02.2010 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Perambalur), in M.C.O.P.No.982 of 2005.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) The Appellant was travelling in a bus bearing registration No.TN-45-N-1611 on 13.07.2003 at about 12.00 a.m between Perambalur and Salem as a passenger along with son and his friend. The Appellant was sitting in the window seat on the right side of the bus. The bus is owned by the respondent-Transport Corporation.

(ii) According to the Appellant, due to rash and negligent driving by the driver of the bus, a lorry coming from the opposite direction hit the Appellant's right hand which resulted in grievous injuries sustained by the Appellant. According to him, the lorry sped away after causing injuries to the Appellant. The Appellant had to get his right hand amputated

below the elbow on account of the accident.

(iii) The appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.982 of 2005 seeking a claim of Rs.6,00,000/- (Rupees Six Lakhs Only) for the injuries sustained by him caused due to the rash and negligent driving by the driver of the bus bearing registration No.TN-45-N-1611 owned by the respondent- Transport Corporation.

(iv) The Motor Accident Claims Tribunal, by its Award dated 01.02.2010 in M.C.O.P.No.982 of 2005, converted the claim of the Appellant into a "no fault liability" under Section 140 of the Motor Vehicles Act and awarded only a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) as compensation to the Appellant, even though the claim was made by the Appellant under Section 163(A) and 166 of the Motor Vehicles Act.

3. Aggrieved by the findings of the Motor Accident Claims Tribunal under the impugned Award, the instant appeal has been filed by the claimant.

4. Heard, Mr.S.Balasubramanian, learned Counsel for the Appellant and Mr.D.Venkatachalam, learned Counsel for the respondent.

5. According to the learned Counsel for the Appellant, only due to the rash and negligent driving by the driver of the bus owned by the respondent Transport Corporation, the accident had happened which resulted in injuries sustained by the Appellant. According to him, due to rash and negligent driving by the driver of the bus, the driver of the bus suddenly turned the bus to the left side and the lorry coming from the opposite direction came and hit the right hand of the Appellant which was protruding outside the window resulted in grievous injuries caused on the Appellant. According to him, there is contributory negligence on the part of the respondent Transport Corporation also, since the driver of the bus did not leave sufficient space between the bus and the lorry which was coming from the opposite direction. According to him, without considering all these factors, the Tribunal has erroneously converted the claim into a "no fault liability" claim under Section 140 of the Motor Vehicles Act and has awarded only a meagre compensation of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the Appellant.

6. The learned counsel for the Appellant drew the attention of this Court to the judgment of this Court reported in MANU/TN/3899/2009 dated 25.11.2009 in the case of Tamil Nadu State Transport Corporation Ltd., Vs P.Ilayaraja and paragraph 7 of the judgment is extracted hereunder:

"7. It is natural for a passenger to keep his hand on the window-sill while

travelling in a vehicle. If the claimant in this case was found to be natural in his attitude at the time of travelling in the bus, then this court can fix the liability upon the driver. It is the duty of the driver to ensure that sufficient gap is left between his vehicle and other vehicle which happens to cross his vehicle from the opposite side. In this case, the driver has failed to leave sufficient space. There is no evidence in this regard. At the same time, the claimant has also contributed to the accident to some extent. Instead of keeping his hand inside the window, as per the allegations in the first information report, he had stretched his hand outside the bus, by means of which he sustained severe crush injury which led to amputation. In these circumstances, this court is of the considered view that a contributory negligence to the accident of 20 per cent could be attributed to the claimant".

7. The learned counsel for the appellant also drew the attention of this Court to a judgment of the Division Bench of the Gujarat High Court reported in 1981 AIR (Gujarat) 205 in the case of Gujarat State Road Transport Ahmedabad Vs Keshavlal Somnath Panchal and paragraph 10 & 11 of the judgment are extracted hereunder:

"10. The decision in Chaturji's case (1979 Cri LJ107) (Guj) in our opinion, would clearly indicate that the general reasoning and approach of the Tribunal in the instant case is not in accord with the well-established principles and criteria to be followed in cases like the present one. The Tribunal's finding that the conduct of the claimant in resting his arm on the window and in allowing it to protrude from the window to the extent of 6" itself amounted to a negligent and even a rash act, irrespective of whether he was warned by the conductor or driver not to do so, would appear to be wholly unsustainable. As observed in Sushma Mitra's case (AIR 1974 Madhya Pradesh 68) passengers who sit adjoining a window very often rest their arms on the window-sill or on the window-railing in such a manner that the elbow is projected from the window to some extent. The mere fact that

the arm of a passenger rests on the window-sill or on a window-railling adjacent to his seat and even protrudes to some extent from the window cannot, therefore, by itself be considered to be an uncommon act per se involving lack of care or prudence. The question which has to be considered in such a case is whether the protrusion of the arm from the window was to an unreasonable extent and whether the act was so obviously fraught with danger that no reasonable or prudent man would consider it safe to act accordingly on the facts and in the circumstances of the case. Besides, the driver of a public vehicle must have such passengers in contemplation and he owes a duty of safety to such passenger which consists of driving the vehicle slowly with care and caution, at least when another vehicle is seen approaching from the opposite direction, and while crossing such vehicle, it is his duty to so manoeuvre his own vehicle that not only any contact with the body of the approaching vehicle is avoided but any contact between the oncoming vehicle and any part of the body of any passenger that might be resting on the window of the bus or projecting therefrom to a reasonable extent is also avoided. The duty in such cases consists in taking precaution to ensure that a passenger, who is sitting with his arm or any other part of his body resting on the window-sill or the window rail or in such a way that it reasonably protrudes therefrom, does not receive any injury when the vehicle crosses an oncoming vehicle and for that purpose he is expected to drive the vehicle in such a manner as to leave sufficient space between the two vehicles. Similar is the duty owed by the driver of the vehicle coming from the opposite direction while crossing a passenger bus.

11. In the instant case, the finding of the tribunal is that the elbow of the claimant was protruding from the window to the extent of about 6" only. It is difficult to hold that such protrusion of the elbow from the window was per se unreasonable or hazardous or fraught with danger on a road whose total width was 25 feet inclusive of shoulders of 5 feet on each side of the road.

It is not possible, under such circumstances, to attribute any negligence to the claimant-passenger. The established facts, on record, on the other hand, lead inevitably to the conclusion that the negligence was on the part of the bus driver or, at the highest, on the part of the bus driver and driver of the oncoming truck. At the time of the accident, the bus was admittedly being driven at the speed of 40 to 45 kilometers per hours. The road on the spot where the accident occurred was straight and the traffic coming from the opposite direction was clearly visible. According to the bus driver's own version, five or six trucks had passed by the place of accident before the truck by which the claimant was injured approached from the opposite direction. The truck was seen by him from a distance of about two to three miles. The bus was near the midline of the road and even assuming that it was on the correct side of the road, there is no evidence to suggest that it was taken to the extreme and on the correct side of the road in order to avoid any injury being caused to any passenger who might have rested his hand or any other part of the body on the window-sill or window-rail or who might have projected the elbow to some extent from the window. In fact, the passenger bus and the oncoming truck crossed each other at such close distance that less than 6" space was left between the two. This is obvious because unless the distance was less than 6", no injury could have been caused to the claimant on the facts and in the circumstances of the case. And a very important circumstance against the background of which the aforesaid facts are to be appreciated is that the hour of the accident was 7-30 P.M. In the month of May when ordinarily sun set time would be 7 to 7-15 P.M. To drive the vehicles so closely at such an hour would be a negligent act, especially when one of the vehicles was a passenger bus. It would thus appear that the Tribunal erred in law in holding in the instant case, on the basis of the reasoning set out above, that there was contributory negligence on the part of the claimant in so far as he allowed his hand to rest on the window in such a way that

the elbow protruded from the window to the extent of 6".

8. The learned Counsel for the appellant also drew the attention of this Court to a judgment of the Division Bench of the Andhra Pradesh High Court reported in MANU/AP/0323/1998 in the case of Depot Manager, APSRTC Vs Ramisetty Koteswar Rao & Others and paragraph 6 of the judgment is extracted hereunder:

"6.Smt.Vijayanihi, learned counsel for the appellants submits that as P.W.1 was resting his elbow on the sill of the window in spite of warnings that the passengers should not keep their hands outside. Therefore, he has also contributed to the negligence which ultimately resulted in the accident. We may straightaway say that there is no evidence that any such precaution was administered to the passengers. Even otherwise it is the duty of the drivers to leave sufficient margin while overtaking or crossing any vehicle keeping in view that it is not uncommon that passengers sometimes keep their hands on the window sill of the window in spite of warning that the passengers should not keep their hands outside, and so it cannot be said that he has also contributed to the negligence which ultimately resulted in the accident. As it is a very common phenomenon that passengers keep their hands in the window sill or even outside or travel on the foot boards; it is the responsibility of the driver alone to drive the vehicle safely taking all precautionary measures to carry the passengers to the destination safely. He has to avoid excessive speed, follow traffic rules, have a good look out and anticipate certain contingencies like cattle straying on the road, children crossing the road suddenly if it is a residential locality etc., and the driver has to take reasonable precautions like an ordinary prudent man to ensure safety of the passengers. He cannot shirk his responsibility and escape award of damages. In A.P.S.R.T.C. v. Dodda Somayajulu, MANU/AP/0185/1982 : 1983 A.C.J.44 a Division Bench of this Court observed that it is not uncommon that the passengers who travel by buses rest their elbows on the window frame

of the bus and no negligence can be inferred on the part of the passengers on that account. Accordingly we hold that no negligence can be attributed to P.W.1.

9. According to the learned counsel for the appellant, the facts of the instant case are similar to the facts in the judgments referred to supra. Therefore, the Tribunal ought to have awarded the compensation as claimed in the claim petition to the Appellant. He also drew the attention of this Court to a judgment of the Division Bench of this Court dated 25.01.2012 in C.M.A.No.722 of 2011 wherein under exceptional circumstances for an accident in the year 2005 even though the multiplier method was not adopted, Rs.3,000/- per percentage of the disability was granted to the claimant in that case. In that case, the claimant had suffered 70% permanent disability and 25% partial disability.

10. Applying the yardstick in the instant case, the Appellant had to amputate his right hand below the elbow and therefore, adequate compensation will have to be granted to the Appellant for his disability and this Court has got the powers to grant the same.

11. Per contra, the learned Counsel for the respondent Transport Corporation, would submit that while the bus was stationary, the Appellant had protruded his hand outside the window and due to the same, the lorry which was coming from the opposite direction, hit the appellant's hand which resulted in grievous injuries caused to him and therefore, the driver of the bus was not at fault. Further, he would contend that FIR has been registered only against the unknown lorry and not against the driver of the bus owned by the respondent Transport Corporation. Therefore, according to him, the findings of the Tribunal ought not to have interfered with by this Court.

12. This Court after considering the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels observes the following:

(a) The nature of injuries sustained by the Appellant has not been disputed by the respondent Transport Corporation before the Tribunal.

(b) The respondent Transport Corporation has also not disputed that the Appellant was travelling as a passenger in their bus and the injuries were caused to him while he was sitting in the bus.

(c) According to the Appellant, only due to rash and negligent driving by the driver of the bus owned by the respondent Transport Corporation, the accident had happened. Further, the Appellant had contended before the Tribunal that

there was no sufficient space left by the driver of the bus to enable any vehicle coming from the opposite direction to proceed without any hindrance. In the instant case, the Appellant's hand was resting on the window side and the lorry coming from the opposite direction had hit his hand which resulted in grievous injuries caused to him and also resulted in amputation of his right hand below the elbow. This Court, under similar circumstances, has held that there is contributory negligence on the part of the Transport Corporation also, which is the owner of the bus. The decision of single Judge of this Court cited by the learned Counsel for the Appellant referred to supra is squarely applicable to the facts of the instant case.

(d) Therefore, this Court is of the considered view that the Tribunal should have attributed contributory negligence on the part of the driver of the bus owned by the respondent Transport Corporation under the impugned Award.

(e) The evidence required for assessing the compensation to the Appellant has been placed by the Appellant before the Tribunal. No fresh evidence is required for assessing the compensation payable to the Appellant.

(f) In the instant case, the Appellant was a Cashier-cum-Assistant Secretary in Kurumbalur Primary Agriculture Co-operative Bank earning a monthly salary of Rs.12,000/- at the time of the accident and he was aged at 51 years.

(g) Due to the accident, his right hand below the elbow has been amputated, which is also not disputed by the respondent Transport Corporation.

(h) The driver has assessed the partial and permanent disability of the Appellant at 72%. The disability certificate was also marked as Ex.P.9 before the Tribunal. The Doctor has also been examined as PW.2. The Appellant has also marked his salary certificate which is Ex.P.7 before the Tribunal. Ten documents were marked as Ex.P.1 to Ex.P.10 and two witnesses were examined on the side of the Appellant, namely, the Appellant himself and his Doctor. On the side of the respondents, two witnesses were examined and three documents were marked. Therefore, all the materials required for assessing the compensation payable to the Appellant are available on record.

13. In the light of the above observations, this Court is of the view that adequate compensation ought to have been awarded to the Appellant and even though he was also negligent in resting his hand in the window side of the bus. This Court is of the view that there is also contributory negligence on the part of the driver of the bus owned by the Transport Corporation.

14. Considering the materials available on record and the evidence placed by both the parties, this Court fixes the contributory negligence of the respondent Transport Corporation at 80% and contributory negligence of the Appellant at 20%.

15. Regarding the quantum of compensation payable to the Appellant, this Court is of the considered view that based on the materials available on record, the total compensation is assessed at a sum of Rs.4,49,982/- (Rupees Four Lakhs Forty Nine Thousand Nine Hundred and Eighty Two Only), out of which, 80% will have to be paid by the respondent Transport Corporation to the Appellant as detailed below:

Heads	Amount
Compensation for partial and permanent disability. (Rs.3,000/- per percentage)	Rs. 2,16,000
Pain and Suffering	Rs. 30,000
Medical Bills (Ex.P5)	Rs.1,29,982
Transportation	Rs. 10,000
Extra Nourishment	Rs. 10,000
Loss of income for two months	Rs. 24,000
Loss of Amenities	Rs. 20,000
Attender Charges	Rs. 10,000
Total	Rs.4,49,982
In the above compensation, 20% of the total amount is to be deducted on account of appellant contributory negligence	Rs. 89,996
Total (after deducting 20%)	Rs.3,59,986

16. In the result, the Award dated 01.02.2010 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.982 of 2005 is hereby set aside and the respondent Transport Corporation is directed to pay a sum of Rs.3,59,986/- (Rupees Three Lakhs Fifty Nine Thousand Nine Hundred Eighty Six Only) together with interest at 7.5% per annum from the date of claim petition till 01.02.2010 being the date of impugned award and from the date of this judgment, till the date of realization, after deducting the amount already deposited, to the credit of M.C.O.P.No.982 of 2005 on the file of Motor Accident Claims Tribunal, (Chief Judicial Magistrate, Perambalur), within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant is permitted to withdraw the

amount lying to the credit of M.C.O.P.No.982 of 2005 along with accrued interest by filing an appropriate application.

17. Accordingly, the appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

srn

To

- 1.The Motor Vehicles Accident Claims Tribunal,
Learned Chief Judicial Magistrate,
Perambalur.
- 2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No. 67113
+1cc to Mr.S.Balasubramanian, Advocate, S.R.No. 67010

C.M.A.No.1804 of 2010

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