

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1190 of 2017
and CMP No.5960 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division - I) Ltd.,
Having Office at Chennimalai Road,
Erode - 2, Erode Taluk, Erode District.

... Appellant/2nd Respondent

-vs-

1. N.Sathiskumar

2. K.Ayyasamy ... Respondents/Claimant & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 06.02.2016 made in MCOP.No.36 of 2015 on the file of the Motor Accident Claims Tribunal, The Special Subordinate Judge, Erode.

For Appellant : Mr.J.Lokesh

For Respondents : Mr.V.Balamurugan for R1

No appearance for R2

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The Transport Corporation which suffered an award for payment of a sum of Rs.15,35,700/- as compensation for the injuries suffered by the 1st respondent claimant has come forward with the appeal questioning the award on the ground of negligence as well as the quantum.

2. According to the claimant, while he was travelling as a passenger in the bus, bearing Registration No.TN 33 N 1831 from Coimbatore to Gobichettipalayam, the driver of the bus drove the vehicle in a rash and negligent manner and dashed against the oncoming Eicher Van causing the accident. It is stated that the Eicher Van fled from the spot. Contending that the accident occurred only due to the rash and negligent driving of the Transport Corporation Bus, the claimant sought for a compensation of Rs.50,00,000/- for the injuries suffered by him. According to the claimant, he was doing Milk Vending business and also Agriculture and was earning about Rs.40,000/- per month.

3. The Transport Corporation resisted the claim contending that the accident was caused due to the rash and negligent driving of the Eicher Van and an FIR was also registered against the Eicher Van in Crime No.128 of 2005. Therefore, according to the Transport Corporation, it is not liable to pay the compensation. The quantum of compensation was also termed as excessive.

4. The Tribunal, which heard the Original Petition, concluded that the accident had occurred due to the composite negligence of both the drivers. However, on the question of liability, the Tribunal concluded that since it is the case of composite negligence any one of the tort-feasors could be made liable for payment of the compensation. Leaving it to open to the tort-feasor, who was made a party to recover the compensation from the joint tort-feasor, who was not made a party to the proceeding.

5. On the quantum, the Tribunal took into account the fact that the injured claimant was an inpatient for over a period of 90 days and the treatment spanned over a period of 3 years, concluded that the claimant would be entitled to a sum of Rs.2,92,000/- towards medical expenses, a sum of Rs.2,00,000/- towards pain and suffering, a sum of Rs.1,62,000/- towards loss of income, a sum of Rs.15,000/- each towards transport charges and extra nourishment, a sum of Rs.500/- towards damages for clothes and articles, a sum of Rs.1,60,000/-, at Rs.2,000/- for percentage of disability, towards permanent disability and a sum of Rs.6,91,200/- towards loss of earning power. In all, the Tribunal awarded a sum of Rs.15,35,700/- as compensation.

6. It is this award which is now challenged by the Transport Corporation.

7. We have heard Mr.J.Lokesh, learned counsel appearing for Mr.K.J.Sivakumar, for the appellant Corporation and Mr.V.Balamurugan, learned counsel appearing for the 1st respondent. The 2nd respondent, the driver of the bus though

served has not chosen to appear either in person or through counsel.

8. Mr.J.Lokesh, learned counsel appearing for the Transport Corporation would contend that the Tribunal was not right in directing the Corporation to pay the entire compensation having held that the accident occurred due to the composite negligence of two vehicles. The question of liability in cases of composite negligence is no longer res integra. The Hon'ble Supreme Court in Khenyei vs New India Assurance Company Ltd., reported in 2015 (1) TN MAC 801, had considered the said question and concluded that in cases of composite negligence if both the tort-feasors are made parties to the Claim Petition, the Tribunal can apportion the liability. In the absence of one of the joint tort-feasors, the Tribunal has to make an award against the tort-feasor, who is made a party and leaving it open to it/him to take appropriate proceedings against the joint tort-feasor who is not made a party before the Tribunal. Therefore, we see no ground to interfere with the award of the Tribunal on the said ground except making it clear that it is open to the Transport Corporation to proceed against the joint tort-feasor, namely the owner of the Eicher Van, if it is so advised to recover the proportionate compensation paid by it.

9. As regards the quantum of compensation, Mr.Lokesh would contend that the Tribunal was not right in assessing the disability at 80%, inasmuch as there is no amputation. The assessment of a functional disability does not depend on amputation only. It is seen from the evidence of P.W.2 that the claimant had suffered various grievous injuries and has been under treatment for nearly 3 years between 2005 and 2008. The right hand of the claimant has become almost useless. Considering the avocation, i.e. a milk vendor and an agriculturist cultivating vegetables, we are of the considered opinion that the assessment of the disability made by the Tribunal is just and proper.

10. The Tribunal has fixed monthly income at Rs.4,500/- and arrived at the loss of earning power as Rs.6,91,200/-. This in our considered opinion is on the lower side. The Tribunal has taken the income per month as Rs.4,500/- which is equal to Rs.150/- per day, even on the agricultural coolly would earn more than Rs.150/- per day. Apart from the above, the Tribunal has not added any amount towards future prospectus. We, therefore, find that the assessment of loss of earning power by the Tribunal at Rs.6,91,200/- cannot be interfered with. The Tribunal has granted a sum of Rs.1,62,000/- towards loss of income for a period of one year and Rs.2,00,000/- towards pain and suffering.

11. Though, Mr.Lokesh learned counsel appearing for the Transport Corporation would make a valiant attempt to project

these awards as excessive, on the facts of the case and on the evidence available, we find that the awards are just and reasonable and they do not call for any interference at our hands. From the Wound Certificate as well as the discharge summary that has been filed as Ex.P3 and Ex.P5, we find that the claimant had undergone various surgeries for over a period of 3 years from the date of the accident till 31.03.2008.

12. We are therefore of the considered opinion that any reduction of the award granted under the head of pain and suffering and loss of income would be unjust and improper. Hence, we do not find any ground to interfere with the overall award passed by the Tribunal. The appeal is therefore, dismissed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

13. The appellant Corporation is directed to deposit the award amount within a period of 8 weeks from the date of receipt of a copy of this judgment along with interest at 7.5% as directed by the Tribunal. On such deposit, the 1st respondent claimant is permitted to withdraw the entire amount.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

jv

To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Erode.

Copy To : The Section Officer, VR Section, High Court Madras.

+1cc to Mr.V.Balamurugan, Advocate SR.No.63912

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.63567

CMA.No.1190 of 2017
and CMP No.5960 of 2017

GMV (22/10/2018)



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