

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2099 of 2011
and M.P.No.1 of 2011

Metropolitan Transport Corporation Ltd.,
Rep. by its Managing Director,
No.2, Pallavan Salai,
Chennai - 600 002. ... Appellant/Respondent

Vs

Rukku ... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 21.04.2010 passed in M.C.O.P.No.4237 of 2007 by the Learned II Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.S.S.Swaminathan

For Respondent : No Appearance

JUDGMENT

The instant appeal has been filed by the transport corporation challenging the award dated 21.04.2010 passed by the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai in MCOP.No.4237 of 2007.

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

2(a) The respondent sustained injuries on 18.10.2007 while she was travelling in an auto rickshaw bearing Registration No.TN09 AP 4268 and a bus bearing Registration No.TN 01N 2557 owned by the appellant/transport corporation, which came in the opposite direction collided with the auto rickshaw, which

resulted in injuries sustained by the respondent. The respondent preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.4237 of 2007 seeking a compensation of Rs.2,00,000/- against the appellant. The Motor Accident Claims Tribunal, by its award dated 21.04.2010 in MCOP.No.4237 of 2007, directed the appellant/transport corporation to pay the respondent a sum of Rs.1,61,000/- together with interest at 7.5% per annum from the date of claim, till date of realisation.

3. Aggrieved by the impugned award dated 21.04.2010 passed in MCOP.No.4237 of 2007, the instant appeal has been filed by the appellant/transport corporation.

4. Heard Mr.S.S.Swaminathan, learned counsel for the appellant. The respondent has been served in this appeal, but she has not entered appearance either through herself or through her counsel.

5. According to the learned counsel for the appellant, the accident had happened due to head on collusion between a bus owned by the transport corporation and an auto rickshaw in which the respondent was travelling as a passenger. According to him, both the auto rickshaw as well as the bus are at fault and therefore the Tribunal ought to have attributed contributory negligence on the part of the auto rickshaw also. But, according to him under the impugned award, the entire liability has been fastened only upon the appellant/transport corporation, who is the owner of the bus. Further, regarding the quantum of compensation, the learned counsel for the appellant would contend that the Tribunal ought not to have awarded excess compensation under the impugned award. According to him, the Tribunal has awarded a sum of Rs.10,000/- as compensation towards loss of income, mental torture to the family members in attending the respondent/claimant, in addition to awarding a sum of Rs.10,000/- as compensation towards pain and suffering, which according to him is not permissible and is excessive. Further, he would contend that the compensation awarded under various other heads under the impugned award is also excessive and not in accordance with law.

6. This Court has examined the impugned award. Admittedly, the FIR has been registered only against the driver of the bus owned by the appellant/transport corporation. The first respondent before the Tribunal has filed documents which are marked as exhibits namely Ex.P1- Copy of Accident Register, Ex.P2- Discharge Summary, Ex.P3- Copy of FIR, Ex.P4 - Copy of Accident Register, Ex.P5- OP Chits, Ex.P6- Disability Certificate, Ex.P7 - X-ray, Ex.P8- Disability Certificate and Ex.P9 - X-ray and also examined three witnesses on her side including herself (P.W.1), eye witness (P.W.2) and a doctor

(P.W.3). The eyewitness/P.W.2 has deposed that only due to the rash and negligent driving by the driver of the bus belonging to the appellant/transport corporation, the accident had happened, which resulted in injuries sustained by the respondent. Even though, it was a head on collision between two vehicles, no contra evidence has been produced by the appellant before the Tribunal to disprove the contention of the respondent that only due to the rash and negligent driving by the driver of the bus, the accident had happened.

7. It has been the consistent stand of the respondent before the Tribunal that only due to the rash and negligent driving by the driver of the bus belonging to the appellant/transport corporation, the accident had happened. Even though, the appellant in its counter before the Tribunal has stated that the respondent ought to have impleaded the owner and driver of the auto rickshaw also as party to the proceedings, the appellant has not filed any application to implead the owner of the auto rickshaw as well as the driver as a party to the proceeding to prove their contention that there is contributory negligence on the part of the driver of the auto rickshaw also. Further, no documentary evidence was produced by the appellant before the Tribunal to prove their claim that there was contributory negligence on the part of the auto rickshaw also. Therefore, in the considered view of this Court, the Tribunal has rightly rejected the said contention of the appellant.

8. In so far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal under the impugned award has erroneously awarded a sum of Rs.10,000/- as compensation towards loss of income, mental torture to the family members in attending to the respondent/claimant and a further sum of Rs.15,000/- towards mental agony to the respondent in addition to a sum of Rs.10,000/- towards pain and suffering. This Court is of the considered view that the Tribunal ought to have awarded a higher compensation to the respondent under the head pain and suffering instead of awarding loss of income, mental torture to the family members in attending to the respondent/claimant and mental agony to the respondent/claimant. Therefore, in the considered view of this Court, the compensation awarded under the heads loss of income, mental torture to the family members in attending to the respondent/claimant and mental agony to the respondent/claimant are hereby set aside and the compensation awarded under the head pain and suffering has to be enhanced from Rs.10,000/- to Rs.35,000/-.

9. In the result, the total compensation of Rs.1,61,000/- along with interest @ 7.5% per annum from the date of petition till the date of deposit, assessed by the Tribunal

under the impugned Award is not modified by this Court but it is adjusted in the following manner :

Sl. No.	Amount awarded by the tribunal	Amount Awarded by this Court
Loss of earning	Rs.2 5,000/-	Rs.25,0 00/-
Transport expenses	Rs. 2,000/-	Rs. 2,000/-
Extra Nourishment expenses	Rs.1 0,000/-	Rs.10,0 00/-
Damaged to clothing and articles	Rs. 2,000/-	Rs.2,00 0/-
Loss of income, Mental torture to the family members in attending to the petitioner	Rs.1 0,000/-	NIL
Medical expenses	Rs. 5,000/-	Rs.5,0 00/-
Mental agony to the petitioner	Rs.1 5,000/-	NIL
Service of Attendants	Rs.1 0,000/-	Rs.10, 000/-
Future medical expenses	Rs. 2,000/-	Rs.2 ,000/-
Loss of amenities	Rs.1 0,000/-	Rs.10, 000/-
Pain and suffering	Rs.1 0,000/-	Rs.35, 000/-
Disability	Rs.6 0,000/-	Rs.60, 000/-
Total	Rs.1,61, 000/-	Rs.1,61,00 0/-

10. In the result, this Civil Miscellaneous Appeal is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed. It is seen from the records, that the appellant/transport corporation had already deposited the entire award together with interest before the Tribunal to the credit of MCOP No.4237 of 2007. Hence, the respondent / claimant is permitted to withdraw the award amount

together with interest, after adjusting the amount already withdrawn, if any.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

To

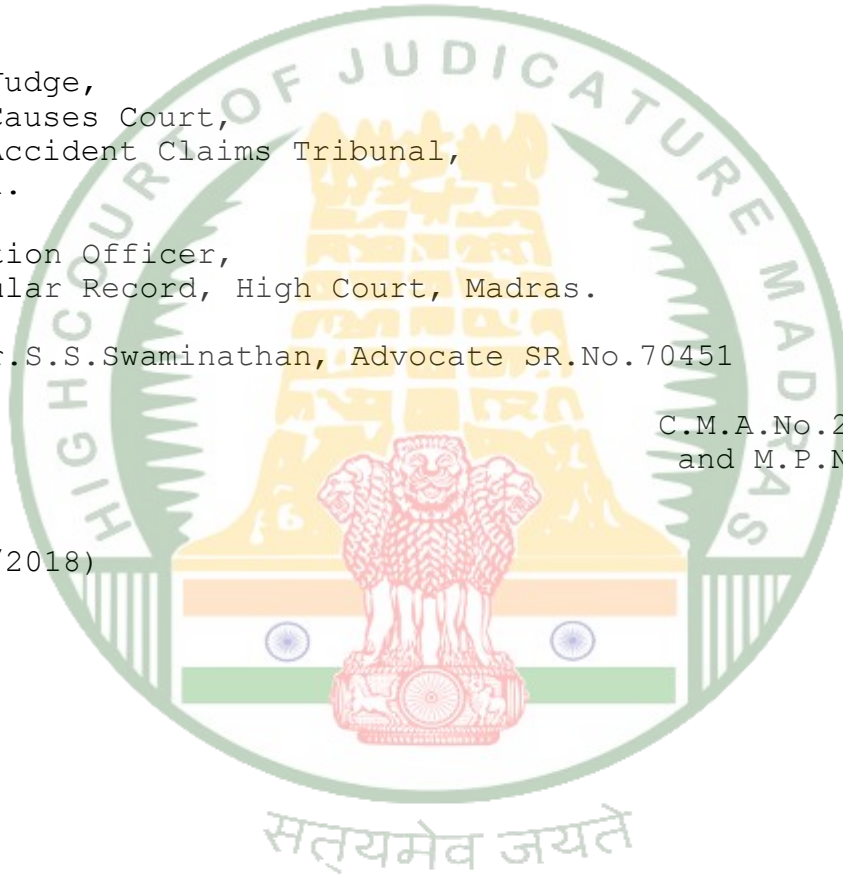
- 1.The II Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.
- 2.The Section Officer,
Vernacular Record, High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.70451

C.M.A.No.2099 of 2011
and M.P.No.1 of 2011

RSK (CO)

GMV (13/11/2018)



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