

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM:

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

C.M.A. No.1566 of 2018
and
C.M.P.No.12404 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
(Villupuram Limit) Villupuram.

.... Appellant

-vs-

Kesavan

.... Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 03.13.2017 made in M.C.O.P.No.426 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Thiruvannamalai.

For Appellant : Mr.J.Lokesh
For Respondent : Mr.F.Terry Chellaraja

J U D G M E N T

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

The State Transport Corporation, Villupuram Division which suffered an award for a sum of Rs.16,78,200/-, for the injuries caused to the respondent in a motor accident that occurred on 22.05.2013 has come forward with this appeal challenging the quantum of compensation.

2. According to the claimant/ respondent, he was a passenger in the bus bearing registration No.TN-25-N-0169 plying from Chennai to Thiruvannamalai. At about 3.00 a.m., when the bus was proceeding near Sothupakkam Village, the driver of the bus drove the vehicle at a high speed rashly and negligently and dashed against the tree on the left side of the road. As a result of the accident, the respondent/ claimant suffered grievous head injuries including fracture in the left wrist, left leg, right ankle and left shoulder causing permanent disabilities like loss of memory, disability to lift heavy articles and being unable to walk independently. It is also claimed that he has to engage a

help of the attender even to carry out his day to day activities. On the above contentions the respondent/ claimed a sum of Rs.10,00,000/- as compensation.

3. The claim was resisted by the Corporation contending that the accident occurred due to the fact that a sand laden lorry attempted to squeeze through the gap between the bus and another lorry and dashed against the right side of the bus and due to the impact, the driver of the bus lost control resulting in the accident. Therefore, according to the Corporation, the accident occurred only due to rash and negligent driving of the private lorry driver. It is also contended that the owner of the private lorry and the insurer are necessary parties to the claim petition. The Corporation also denied the age, income and other particulars as set out in the claim petition.

4. The Tribunal which heard the Original Petition, framed two issues which are as follows:-

1. Whether the accident occurred due to the rash and negligent driving of the driver of the Government bus bearing registration No.TN-25-N-0169?

2. Whether the petitioner is entitled to a compensation? If so what shall be the quantum and from whom?

5. On the question of negligence, the Tribunal found that there is total lack of evidence regarding the claim of the Corporation about the lorry which according to it was responsible for the accident. The Tribunal also took note of the fact that the criminal case was registered against the driver of the bus who was examined as RW1 and he was also suspended for about 10 days. Rejecting the evidence of RW1 as interested testimony, the Tribunal accepted the evidence of PW1 viz., the Claimant, for it was corroborated by the other factors viz., filing of the criminal case, suspension of the driver by the Corporation. The Tribunal thus concluded that the accident occurred due to the rash and negligent driving of the bus.

6. On the quantum, the Tribunal took note of the fact that the Medical Board has assessed the permanent disability at 40%. The age of the claimant was fixed at 35 years, on the basis of his date of birth shown in his driving license which was marked as Ex.P16. The Tribunal also took note of the fact that the petitioner was working as Mason as well as building contractor at the time of the accident and the contents of Ex.P17 Income Tax returns which shows that the TDS has been deducted by M/s.Sunmar Constructions for the payments made to the respondent/ claimant.

7. The Tribunal however assessed the monthly income of the claimant at Rs.7,500/-, adding 30% towards future prospects, the

Tribunal arrived at monthly income at Rs.9,750/-. Considering the nature of injuries and the occupation of the injured claimant, the Tribunal arrived at functional disability at 60%. Adopting the multiplier of 16, the Tribunal worked out the pecuniary loss for the functional disability [loss of earning power] at Rs.11,23,200/-. The Tribunal also awarded a sum of Rs.2,60,000/- towards medical and transportation expenses based on Ex.P7 medical bills. Considering the fact that the respondent/ claimant was hospitalized for a long period, the Tribunal awarded a sum of Rs.1,35,000/- at Rs.7,500/- per month as compensation for loss of earning during the treatment period. Taking into account the impending surgeries, the Tribunal awarded a sum of Rs.80,000/- towards future medical expenses. The Tribunal also awarded Rs.25,000/- for attender charges, Rs.5,000/- towards extra nourishment and Rs.50,000/- towards pain and sufferings. In all the Tribunal awarded a sum of Rs.16,78,200/-.

8. We have heard Mr.J.Lokesh, learned counsel for Mr.K.J.Sivakumar, learned counsel for the appellant and Mr.F.Terry Chellaraja, learned counsel appearing for the respondent/ claimant.

9. Mr.J.Lokesh, learned counsel appearing for the appellant/ Corporation would contend that the Tribunal erred in fixing the functional disability at 60%, more so, when the Medical Board has fixed the permanent disability only at 40%.

10. Mr.F.Terry Chellaraja, learned counsel appearing for the respondent/ claimant would contend that the income notionally assessed by the Tribunal at Rs.7,500/- is very low. Pointing out to the income tax returns filed as Ex.P17 and the Bank statement, Ex.P21, wherein, various amounts to the tune of Rs.2,29,825/- during the year 2011 and Rs.4,50,043/- during the year 2012 have been credited as payments received from M/s.Sunmar Constructions Limited, the learned counsel would contend that the Tribunal ought to have fixed the monthly income at a higher rate.

11. We have given our anxious consideration to the rival submissions of the learned counsels on either side. As far as the question of negligence is concerned, we see no ground to interfere with the factual findings of the Tribunal. The Tribunal has given justifiable reasons for rejecting the testimony of RW1 and for accepting the testimony of PW1 which is in tune with the documentary evidence viz., the criminal case records. Therefore, we do not see any reason to interfere with the findings of the Tribunal on the ground of negligence.

12. On the quantum, of course we see some force in the contention of the Mr.J.Lokesh, learned counsel regarding the

quantum of disability fixed by the Tribunal. The Tribunal has accepted the report of the Medical Board which was marked as Ex.C1, wherein, the permanent disability was assessed at 40%. The Tribunal further thought it fit to assess the functional disability at 60%, considering the nature of the work of the claimant/ respondent. As rightly pointed out by Mr.F.Terry Chellaraja, learned counsel appearing for the respondent/ claimant, the fixation of monthly income at Rs.7,500/- is really on the lower side. Considering the documentary evidence in the form of Ex.P17 and Ex.P21 which would show that the respondent/ claimant was earning much more than Rs.7,500/- per month. However, if we reduce the quantum of disability assessed by the Tribunal as suggested by the learned counsel for the Corporation, we will have to increase the monthly income assessed by the Tribunal. Since it is obvious that income fixed by the Tribunal is on the lower side, the resultant position will be the same and the compensation arrived at by the Tribunal will be just and proper.

13. Taking into account the over all circumstances, we find that the compensation awarded by the Tribunal is just and reasonable. Though, there is some scope for reducing the quantum of disability. We hasten to add that there is also scope for increasing the monthly income fixed by the Tribunal.

14. We are therefore of the view that the award as a whole does not call for any interference at our hands. Hence, the appeal fails and it is dismissed. There will however be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

dsa

To

1. The Motor Accident Claims Tribunal,
Special Sub Judge (MCOP),
Thiruvannamalai.
 2. The Section officer
VR Section, High Court, Madras 104.
- +1 CC to Mr.K.J. Sivakumar, Standing Counsel TNSTC & SETC sr 58901.
+1 CC to Ms.M. Malar, Advocate sr 58941.

C.M.A. No.1566 of 2018

SPD(CO)
SP(28/09/2018)