

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-11-2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2320 of 2015

Minor Naveen Prasath
Rep.by next friend / guardian
Father Subramanian ... Appellant /Petitioner

Vs

1.R.Viswanathan
2. The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
No.37, Mettupalayam Road,
Coimbatore Town & Taluk,
Coimbatore District. Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 21.07.2015 made in MCOP No.278 of 2014 on the file of MACT/Sub Court, Gobichettipalayam.

For Appellant : Mr.Ma.P.Thangavel

For R-1 : No appearance

For R-2 : Ms.R.T.Sundari

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 21.07.2015 made in MCOP No.278 of 2014 on the file of MACT/Sub Court, Gobichettipalayam.

2. The appellant is the claimant in the above said claim petition. He filed the said claim petition claiming a sum of Rs.6,50,000/- as compensation for the injuries sustained by the appellant in the accident that took place on 25.12.2013.

3. The Tribunal, considering the pleadings, oral and documentary evidence held that both the minor appellant and the first respondent who is the driver of the bus belonging to the second respondent/transport corporation contributed negligence

to the accident and apportioned the liability in the ratio of 50 : 50 and directed the respondents 1 & 2 as jointly and severally liable to pay the compensation to the appellant towards 50% negligence attributed by the first respondent.

4. Challenging the portion of the award fastening the liability of 50% on the appellant and also for enhancement of compensation, the present appeal is filed by the appellant.

5. The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of PW2 in proper perspective. The Tribunal erred in fixing 50% of negligence on the minor appellant on the ground that the minor appellant did not have any driving licence and the FIR was lodged against him. Based on the rough sketch and FIR alone, the Tribunal cannot fix negligence on the part of the minor appellant. PW2, an independent eye-witness has stated that only due to the rash and negligent driving by the driver of the bus, the accident has occurred. The deposition of PW2 was not disproved in the cross examination. The first respondent, driver of the bus who was examined as RW1 is an interested witness and hence his evidence cannot be accepted.

6. The learned counsel for the appellant further contended that contributory negligence cannot be fixed based on conjecture and without any evidence. Only by positive evidence, contributory negligence can be fixed. In support of his contention, the learned counsel for the appellants, relied on the following judgments -

(i) 2013 (4) TNMAC 44 (SC) [Jiju Kuruvila & Ors. v. Kunjujamma Mohan & Ors.

(ii) 2013 (1) TNMAC 60 (DB) [Oriental Insurance Co. Ltd. v. T.R.Subramani (Died) & Ors.

(iii) CDJ 2017 SC 1416 [Dinesh Kumar v. National Insurance Co. Ltd. & Ors.

7. PW3 - doctor has certified that minor appellant suffered 55% of permanent disability which itself is very low. The injuries sustained by the minor appellant would affect his entire future earning capacity. The Tribunal, without any basis reduced the same to 45% and erred in granting Rs.2,500/- per percentage of disability instead of applying multiplier method. The Tribunal ought to have fixed 100% disability and applied multiplier method. The amounts awarded under different heads is very meagre and prayed for enhancement of compensation. In support of his contention, he relied on the judgment reported in 2014 (11) SCC 178 (V.Mekala v. M.Malathi & Another) contending

that the Hon'ble Apex court for the fracture sustained by a minor appellant aged 16 years, fixed notional income at Rs.10,000/- and added Rs.5,000/- towards future prospects and applied multiplier method for calculating loss of income.

8. Per contra, the learned counsel appearing for the second respondent / transport corporation contended that the accident occurred at a curve. The driver of the bus drove the same at a moderate speed. The minor appellant rode the motor bike in a rash and negligent manner and dashed against the bus and invited the accident. The driver of the bus lodged a complaint against the appellant and he deposed that the accident has occurred due to the rash and negligent driving by the appellant. PW2 alleged eye-witness has not lodged any complaint against the driver of the bus. The Tribunal has given valid reason for fixing the percentage of disability. There is nothing on record to show that there is functional disability of the appellant or appellant was totally immobilized for adopting multiplier method. The amounts awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

9. Heard the learned counsel for the appellant as well as second respondent and perused the materials available on record.

10. From the materials on record, it is seen that the accident occurred at a curve. PW2 has deposed that the accident occurred due to the rash and negligent driving by the driver of the bus. He has not lodged any complaint to that effect. On the other hand, RW1, the driver of the bus has lodged a complaint alleging that the appellant was responsible for the accident. The father of the appellant has not submitted any objection and has not lodged any complaint against the driver of the bus. The father of the appellant, as PW1 has deposed that when the police enquired and asked him to give a complaint against the driver of the bus, he did not give any complaint due to the condition of his son who was taking treatment in the hospital. He further deposed that after his son recovered from the injuries, he lodged a complaint in the police station who refused to receive the same. To substantiate his contention, he has not taken any steps to complain to higher authorities to get the complaint registered against the driver of the bus who was examined as RW1. The Tribunal, appreciating the evidence of PW2 and RW1, coupled with the FIR, rough sketch and charge sheet held that both the appellant as well as the driver of the bus are responsible for the accident.

11. It is well settled that even though FIR is not the final document to decide the negligence on the part of the driver, it can be considered alongwith evidence let in by the parties to decide the negligence. From the materials on record, it is seen

that the accident has occurred at a curve and it is admitted that vehicles coming in the opposite direction cannot be seen by the driver of the vehicles. The Tribunal has considered all the above evidence and held that both the appellant and the driver of the bus are responsible for the accident. There is no reason to interfere with the said finding. At this stage, I would like to point out that the father and guardian of the minor allowed his minor son aged 16 years to drive the motor bike with full knowledge that the minor did not possess valid driving licence and he is also responsible for the action of the minor and for the accident. The finding of the Tribunal is based on evidence and not on conjecture and/or assumptions. In view of the same, the judgments relied on by the learned counsel for the appellant is not applicable to the facts of the present case. Hence, the negligence fixed by the Tribunal at 50 : 50 each on the appellant as well as the first respondent is confirmed.

12. As far as quantum of compensation awarded by the Tribunal is concerned, PW3 - Doctor has certified that the appellant has suffered 55% disability but the Tribunal had reduced it to 45% on the ground that PW3 is not the doctor who treated the appellant and is not a qualified surgeon and he has examined the appellant after a period of 1½ years of the accident. These reasons are not valid reason to reduce the percentage of disability. Hence, the appellant is entitled to compensation for 55% disability as per the disability certificate assessed by PW3 - Doctor. The accident took place on 25.12.2013 and hence the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus the amount awarded by the Tribunal under the head permanent disability at Rs.1,12,500/- is enhanced to Rs.1,65,000/- (55% x Rs.3000/-).

13. The contention of the learned counsel for the appellant that the Tribunal ought to have applied multiplier method is without merits. PW3 - doctor has not stated that the appellant is totally disabled and cannot do any work independently and has to depend on somebody for his day-to-day activities. In such circumstances, multiplier method cannot be adopted for calculating permanent disability. The amounts awarded by the Tribunal for pain & suffering and extra nourishment are meagre and hence they are enhanced to Rs.40,000/- and Rs.25,000/- respectively. The amounts granted by the Tribunal under other heads are reasonable and hence they are confirmed. The appellant has produced Ex.P18, the estimate given by PW3 - doctor towards future medical expenses. However, the Tribunal has not given any reason for not considering the same. Considering the nature of injuries suffered by the appellant, he is entitled to a sum of Rs.10,000/- towards future medical expenses. Thus, the compensation awarded by the tribunal is modified as follows -

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	1,12,500/-	1,65,000/-	enhanced
2.	Transport to hospital	5,000/-	50,000/-	confirmed
3.	Extra nourishment	15,000/-	25,000/-	Enhanced
4	Attender charges	15,000/-	15,000/-	Confirmed
5	Pain and suffering	25,000/-	40,000/-	Enhanced
6	Mental Agony and Shock	5,000/-	5,000/-	Confirmed
7	Medical expenses	2,45,800/-	2,45,800/-	Confirmed
8	Future medical expenses	-	10,000/-	Granted
	Total	Rs.4,23,300/-	Rs.5,55,800/-	By enhancing a sum of Rs.1,32,500/-

14. In the result,

(i) C.M.A No.2320 of 2015 is partly allowed enhancing the award of the Tribunal from Rs.4,23,300/- to Rs.5,55,800/- along with interest at the rate of 7.5% per annum from the date of petition till date of realisation alongwith costs.

(iii) The second respondent/transport corporation, as owner of the bus is directed to deposit their share of 50% of the modified award amount, less the amount already deposited, if any, along with proportionate interest and costs to the credit of M.C.O.P.No.278 of 2014 on the file of Sub Court, Gobichettipalayam, within a period of twelve weeks from the date of receipt of copy of this judgment;

(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the modified award amount, less the amount already withdrawn, if any, alongwith interest and costs, by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rgr

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Gobichettipalayam.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

+lcc to Ms.R.T.Sundari, Advocate sr.78804

+lcc to Mr.Ma.P.Thangavel, Advocate Sr.79523

सत्यमेव जयते C.M.A.No.2320 of 2015

br[co]
srg 03/06/2019

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