

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2373 of 2015
and Cross Objection No.114 of 2015

CMA.No.2373 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram 605 602. ... Appellant/Respondent

Vs.

Dinesh Babu ... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 25.04.2014 made in M.C.O.P.No.5009 of 2011 on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.J.Sivakumar

For Respondent : Mrs.M.Malar

Cross Objection No.114 of 2015:

Dinesh Babu ... Cross objector
/Respondent (Petitioner)

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
No.3/137, Salamedu,
Vazhuthareddy, Villupuram 605 602.

... Respondent/Petitioner

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the Decree and Judgment dated 25.04.2014 made in M.C.O.P.No.5009 of 2011 on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Cross Appellant : Mrs.M.Malar

For Respondent : Mr.K.J.Sivakumar

C O M M O N J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the decree and judgment dated 25.04.2014 made in M.C.O.P.No.5009 of 2011 on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.Both the appeals, since the parties in both the appeals are one and the same, they are disposed of by this common judgment.

3.The appellant-Transport Corporation is the respondent in M.C.O.P.No.5009 of 2011, on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, which was filed by the respondent/cross objector, claiming compensation for the injuries sustained by him in the accident that took place on 01.05.2011.

4.The learned counsel for the appellant-Transport Corporation contended that the driver of the Mini Lorry suddenly stopped the vehicle without any signal and in view of the same, the driver of the bus belonging to the appellant-Transport Corporation dashed against the backside of the van and the accident occurred. The accident occurred only due to the negligence on the part of the driver of the Mini Lorry. The Tribunal, without any proper reason, failed to appreciate the evidence of R.W.1, the driver of the bus. The percentage of disability fixed by the Doctor at 85% is on higher side. The Tribunal without considering the nature of injuries, fixed the percentage of disability at 80%. The amounts awarded towards pain and suffering and other heads are all excessive. The Tribunal has awarded compensation for loss of earning, without any proof.

5.Per contra, the learned counsel for the claimant contended that the First Information Report was lodged against the driver of the bus. According to him, the driver of the bus drove the same in a rash and negligent manner and dashed against the Mini Lorry on its back side and caused the accident. The claimant who is an eye-witness and injured person had deposed to that effect. The Tribunal considering the evidence of the claimant and driver of the bus who was examined as R.W.1, has rightly held that accident occurred only due to the rash and negligent driving by

the driver of the bus belonging to the appellant-Transport Corporation, by giving cogent and valid reason. The amounts awarded under different heads are very meager and prayed for enhancement of the compensation.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. From the materials on record, it is seen that the Tribunal has considered Ex.P1, First Information Report as well as the evidence of respondent as P.W.1 and evidence of R.W.1 and held that accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation. The Tribunal has given cogent and valid reason for the said conclusion. There is no error warranting interference in the order of the Tribunal, by this Court.

8. P.W.2, Doctor had deposed that the claimant suffered 85% of disability. The Tribunal considering the evidence of P.W.2, fixed the same at 80%. The appellant did not let in any evidence to disprove the percentage of disability suffered by the claimant. The reason given by the Tribunal for reducing the percentage of disability to 80% from 85% is not correct. The claimant is entitled to compensation for 85% at the rate of Rs.2000/- per percentage of disability.

9. As far as the amount awarded towards loss of income during the leave period of 66 days is concerned, they are without any basis. From the materials on record, it is seen that the claimant has taken medical leave during treatment period. It is not the case of the claimant that for the medical leave period, he did not receive salary. The Tribunal on assumption that the claimant would have availed the same for some other ailment, awarded a sum of Rs.46,926/- as compensation towards loss of leave for 66 days. Similarly, without any basis, the Tribunal awarded a sum of Rs.20,000/- as compensation for mental agony. Hence, the sum of Rs.46,926/- awarded under the head of loss of leave for 66 days and Rs.20,000/- towards mental agony are set aside. The contention of the learned counsel for the claimant is that the claimant was in hospital for 66 days and he underwent surgery and the Tribunal has not granted any amount towards loss of amenities. Hence, a sum of Rs.20,000/- is granted towards loss of amenities. The amounts granted under all other heads are confirmed. 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.	Loss of amenities	-	20,000/-	granted
2.	Transportation	10,000/-	10,000/-	confirmed
3.	Extra nourishment	10,000/-	10,000/-	confirmed
4.	Medical expenses	95,700/-	95,700/-	confirmed
5.	Attender charges	10,000/-	10,000/-	confirmed
6	Pain and suffering	50,000/-	50,000/-	confirmed
7	Disability of 85% at the rate of Rs.2000/- per disability	1,60,000/-	1,70,000/-	enhanced
8	Loss of leave for 66 days	46,926/-	-	Set aside
9	Mental agony	20,000/-	-	Set aside
	Total	4,02,626/-	3,65,700/-	Reduced by Rs.36,926/-

10. The compensation awarded by the Tribunal is reduced from Rs.4,02,626/- to Rs.3,65,700/- with interest at the rate of 7.5% p.a from the date of petition till the date of realization. The appellant-Transport Corporation is directed to deposit the modified award amount, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent/claimant/cross objector is permitted to withdraw the award amount with accrued interest, after adjusting the amount if any, already withdrawn. The appellant-Transport Corporation is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.5009 of 2011, if the entire award amount has already been deposited by them.

11.In the result, both the Civil Miscellaneous Appeal and the Cross Objection are allowed in part. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The II Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Ms.M.Malar, Advocate Sr.78517

+1cc to Mr.K.J.Sivakumar, Advocate Sr.79046

CMA.No.2373 of 2015
and Cross Objection No.114 of 2015

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srg 28/03/2019

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