

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10.10.2018
JUDGMENT PRONOUNCED ON : 26.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.399 of 2011

Indirani

Appellant/Claimant

Vs

1. The Managing Director
Tamil Nadu State Transport Corporation Ltd
Villupuram II, Vellore

2. P. Ravi

3. National Insurance Co. Ltd
Rep by its Divisional Manager
Officers Line
Vellore-1

Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.06.2010 made in MCOP No.75 of 2006 on the file of Motor Accidents Claims Tribunal/Subordinate Judge, Vellore.

For Appellant : Mr.K. Raghuraman

For Respondents: R1 & R3- Served on 25.02.2013
R2 - Dismissed (Order Dated 04.09.2015)

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal/Subordinate Judge, Vellore in MCOP No.75 of 2006, the appellant who is the claimant in the above said MCOP had preferred this appeal to set aside the award passed by the Claims Tribunal and for enhancing the compensation amount. For the sake of convenience, hereinafter the parties are referred as per their litigative status before the Tribunal.

2) On 11.09.2005, at about 14.35 hours, the petitioner was travelling in a bus owned by the Tamil Nadu State Transport

Corporation bearing Reg.No. TN 23 N 1222 when the bus was nearing Perumal puram, the driver drove the bus in a rash and negligent manner and hit against the lorry bearing Reg.No. TN 04 T 898, which came from the opposite direction. Due to the said accident, the number of passengers travelled in the bus, sustained injuries all over the body. The petitioner had also sustained grievous injuries in her leg and resultantly, her leg was amputated. For the said accident, a case has been registered against the driver of the bus in Cr.No. 274 of 2005 by the SHO, Virunchipuram Police Station. After the accident, the petitioner was admitted in Government Hospital, Vellore and thereafter referred to CMC Hospital, Vellore. She spent Rs.1,00,000/- towards medical expenses. She filed a Claim petition, claiming Rs.10,00,000/- before the claims Tribunal under Section 166 of MV Act. After elaborate enquiry, the Claims Tribunal determined Rs.1,55,000/- as compensation, against which the claimant is before this Court with this appeal.

3) Per contra, the 1st respondent, who is the owner of the bus, by filing Counter disputed the claim of the petitioner, particularly about the manner of the accident. The Claim of the petitioner about the age, avocation and income of the injured are all disputed. According to him, the accident occurred only due to the negligent act of the lorry driver and not due to the negligent act of the bus driver. Thereby, he sought for dismissal of the petition.

4) The 2nd respondent remained exparte.

5) The 3rd respondent filed a Counter statement, in which he has also disputed the claim of the petitioner. He has stated that, at the time of accident, the driver of the bus alone drove the bus in negligent manner and hit against the lorry. According to him, the rash and negligent act of the bus driver alone is the reason for the said accident. Thus, the 3rd respondent sought for dismissal of the petition filed by the claimant.

6) Before the Tribunal, the petitioner examined himself as PW 1 and the Doctor who treated the claimant was examined as PW 2. Further, on the side of the claimant, 6 documents were exhibited as Ex.P.1 to Ex.P.6. On the side of the respondents, the Manager of the 3rd respondent Insurance company alone examined as RW 1 and he had produced 8 documents as Ex.R 1 to R 8. After concluding the trial, the claims Tribunal held that the accident had occurred only due to the rash and negligent act of the bus driver and directed the 1st respondent to pay the compensation. Further, Rs.1,55,000/- was determined as total compensation for the injuries sustained by the claimant.

7) In respect to the negligent aspect, in the Claims Tribunal, when at the time of examining the PW 1, the claimant has stated that the occurrence had happened only due to the rash and negligent act of the bus driver and not by the negligent act of the lorry driver. In this connection, it is to be noted that the case for the said accident has been registered only against the driver of the bus. In the Claims Tribunal, the copy of the First Information Report was marked as Ex.P.1, in the said document the defacto complainant for this occurrence has clearly stated that at the time of accident, the driver of the bus alone drove the vehicle in a rash and negligent manner. In order to dispute the said averment, the driver of the bus has not been examined as witness before the claims Tribunal. Moreover, in the Claims Tribunal, the copy of the award passed by the various Claims Tribunal in MCOP Nos.361 of 2005, 100 of 2006, 119 of 2006, 216 of 2007 and 282 of 2007 were marked as Ex.P.5 and Ex.R.2 to Ex.R.8. Those awards are passed in the cases filed by the different passengers, who are all sustained injuries in the same accident mentioned by the Claimant herein. It is to be noted when at the time of disposing the claim application filed by the various passengers, the various Claims Tribunal had come to the same conclusion that the rash and negligent act of the bus driver alone is the reason for the said accident. Moreover, RW 1, who is the officer in charge of the 3rd respondent has clearly stated that the said accident had happened only due to the rash and negligent act of the bus driver. The said evidence also not disputed on the side of the Transport Corporation. So the inaction on the part of the 1st respondent in examining the driver of the bus will show that the accident is only due to the negligent act of the bus driver. In this way, I am of the considered opinion that the said inaction on the part of the 1st respondent is one of the main reason to hold that the accident is only due to the rash and negligence of the bus driver. This Court uphold the findings arrived at by the Claims Tribunal in this aspect. Accordingly, if any compensation is awarded in favour of the claimant, the 1st respondent alone is liable to pay the same to the claimant.

8) In respect to the quantum of compensation determined by the Claims Tribunal, the learned Counsel appearing for the claimant would contend that in the accident, the right leg of the claimant has been amputated, and she sustained 60% of Disability. Further, the said Disability is nothing but functional disability. In the said circumstances, the claims Tribunal ought to have calculated the compensation, by following the multiplier method. Instead of that, the claims Tribunal not followed the said procedure and awarded Rs.50,000/- under the head of disability. Further, the Claims Tribunal awarded Rs.5,000/- under the head of Transportation, Rs.5,000/- under

the head of extra nourishment. Further, Rs.50,000/- was awarded for pain and sufferings, Rs..15,000/- was awarded for medical expenses and Rs.30,000/- was awarded towards loss of earning capacity are very meager and thereby she prayed to enhance the compensation amount by calculating through the multiplier method.

9) It is not disputed that due to the accident, the right leg of the claimant was amputated. In this regard, PW 2, Dr.R.Shanmugasundaram has stated that the claimant is having right leg below the knee upto 11 cm. He has stated that for fixing the artificial leg, 70 cms of leg is necessary. In the above circumstances, since the leg of the claimant was amputated, the claimant being a coolie, it is very difficult for her to perform her regular work. So, calculating the compensation through the multiplier method is appropriate, reasonable and justifiable one. In this respect, the claimant in her chief examination has stated that she was earning Rs.4,000/- per month. The Doctor, who issued the Disability Certificate has stated that the claimant has suffered 60% disability.

10) In respect to the age of PW 1, she has stated in her evidence that she was aged about 50 years. Now, on going through the Ex.P.2, Discharge Summary issued to the claimant, it was mentioned that the claimant was aged about 52 years. So, number 11 is the appropriate multiplier for calculating the compensation. Thereby, the compensation for the disability sustained by the claimant is calculated as follows.

$$\text{Rs.4,000/-} \times 12 \times 11 \times 60\% = \text{Rs.3,16,800/-}$$

Accordingly, Rs.3,16,800/- is awarded to the claimant under the head of loss of earnings. In respect to the pain and sufferings, as per the Discharge Summary, she took treatment as inpatient for the period from 26.09.2005 to 11.10.2005 at CMC Hospital, Vellore. Further, during the said period, a surgery was performed and her leg was amputated. So it is necessary to award Rs.25,000/- under the head of pain and sufferings. Apart from that, Rs.5,000/- was allowed towards transportation, Rs.5,000/- was allowed towards extra nourishment, Rs.5,000/- towards attender's charges and Rs.5,000/- towards future medical expenses. Moreover, the claimant produced medical bills for Rs.12,022/-. Since the genuineness of the medical bills are not disputed by the respondent, the claimant is entitled to Rs.12,000/- under the head of medical expenses. Accordingly, the appellant is entitled to the compensation as follows.

SL. NO	PARTICULARS	Awarded by the Tribunal	Awarded by this Court
		AMOUNT (IN.RS)	
1.	Towards Pain and sufferings	50,000.00	25,000.00

SL. NO	PARTICULARS	Awarded by the Tribunal	Awarded by this Court
		AMOUNT (IN.RS)	
2.	Towards Loss of income	30,000.00	3,16,800.00
3.	Towards Permanent partial disability	50,000.00	-
4.	Towards Transport expenses to Hospital	5,000.00	5,000.00
5.	Towards Extra nourishment	5,000.00	5,000.00
6.	Towards Attender's Charges	-	5,000.00
7.	Towards future medical expenses	-	5,000.00
8.	Towards medical expenses	15,000.00	12,000.00
	Total	1,55,000.00	3,73,800.00

11) Hence, the compensation arrived at by the Claims Tribunal is enhanced to the extent of Rs.3,73,800/- . The rate of interest awarded by the Claims Tribunal 7.5% per annum is unaltered. The 1st respondent is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, after collecting the Court fee for the enhanced compensation, the Tribunal is directed to transfer the said amount to the Bank account of the appellants through RTGS/NEFT within a period of one week.

12) In the result, the Civil Miscellaneous appeal is disposed of. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrn

To

The Motor Accidents Claims Tribunal/
Subordinate Judge, Vellore.

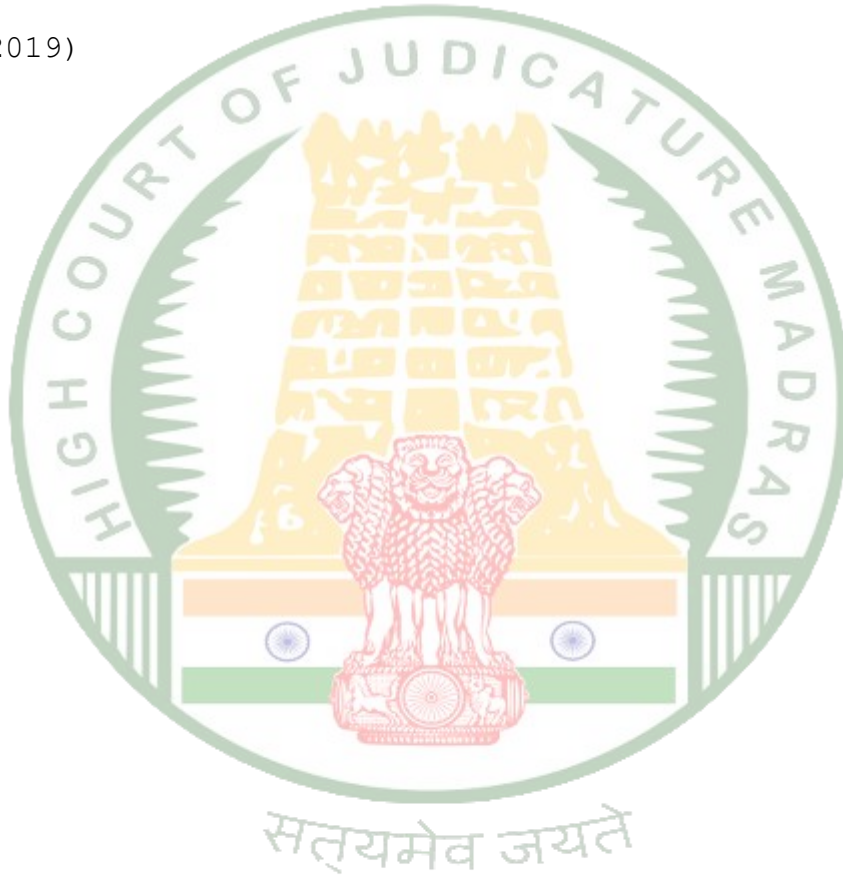
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The Section Officer
VR Section
High Court
Madras

+1cc to Mr.K.Raghuraman, Advocate, S.R.No. 80319

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SVN(CO)
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