

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.135 of 2014

Jayakumar

...Appellant/Petitioner

vs

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram

...Respondent/Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 23.01.2013 made in M.C.O.P.No.77 of 2009 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Tiruvallur.

For appellant : : Mr.G.Karthikeyan
for Respondent : : Mr.A.Antony Arockiyaraja

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 23.02.2013 made in M.C.O.P.No.77 of 2009 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Tiruvallur.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioner is that on 25.08.2008, at about 09.30 hours, when the petitioner was riding motor cycle bearing Reg.No.TN-20-AQ-9048 towards Thiruvallur Government Hospital, near Sub Court Signal, J.N.Road, Thiruvallur, on the extreme left side of the road, the respondent Transport Corporation Bus bearing Reg.No.TN-21-N-0767, came at high speed, driven in a rash and negligent manner in the same direction, dashed on the two wheeler, resulting in the petitioner suffering grievous injuries.

2.2. It is the further case of the Petitioner that the accident occurred due to rash and negligent driving of the respondent corporation bus driver only. At the time of the

accident, the Petitioner was aged 22 years and was employed as car driver, earning Rs.4000/- per month along with Rs.100/- as daily bata. Due to the injury suffered by him, the Petitioner is unable to attend to his work and as such, he suffered loss of income. Hence the Petitioner sought Rs.10,00,000/- from the Respondent-Transport Corporation.

3. On the other hand, opposing the petition, by filing counter, the Respondent-Transport Corporation contends that the claim of the Petitioner about the manner in which the accident took place is not correct. The age, income and avocation of the Petitioner is to be proved by the Petitioner himself. The claim of the Petitioner for compensation under differed heads is exorbitant. The Plea of the Petitioner is unsustainable and thereby, the respondent-Transport Corporation sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and the medical expert as P.W.2. He produced documents Ex.P.1 to Ex.P.13, to prove his claim. On the side of the respondent-Transport Corporation, the driver of the bus involved in the accident deposed as R.W.1, but no document was produced. The Tribunal, after analysing the evidence available on record, held that the petitioner and the driver of the 1st respondent-Transport Corporation equally responsible for the accident and arrived at a compensation of Rs.1,45,374/- and after deducting 50% of the same for the contributory negligence of the petitioner, awarded a sum of Rs.72,687/- to the Petitioner. Being not satisfied with the said award passed by the Tribunal, the Petitioner/claimant has come forward with the appeal.

5. The learned counsel for the Appellant/Petitioner contends that the injured Petitioner has lost one kidney and he is in need of substantial amount towards future medical expenses for transplantation of kidney. The Tribunal erred in not awarding any sum towards Permanent disability. The award passed by the Tribunal is on the lower side and without appreciating the documents produced by the Petitioner, the compensation amount has been granted under different heads. Hence the petitioner seeks to entertain the appeal and to enhance the quantum of the award passed by the Tribunal.

6. Per contra, the learned counsel for the Respondent-Corporation contends that the tribunal has rightly appreciated the evidence on record and found that the petitioner as well as the Respondent-Transport Corporation driver equally responsible

for the accident and fixed negligence on both the drivers at 50% each. This apportionment of the liability according to the respondent-Transport Corporation is just and correct conclusion and the same need not be interfered with. The amount awarded by the Tribunal under various heads is also correct and proper. Hence, by contending as stated above, the Respondent seeks dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. The main contention of the Petitioner is that the Tribunal erred in fixing negligence equally on the petitioner and the respondent bus driver. According to the Petitioner, the available records clearly established the fact of the negligence of the respondent Corporation bus driver as the sole reason for the accident. In such circumstances, it is to be seen as to whether negligence on the part of the both driver as fixed by the Tribunal at 50% each is just and proper.

9.1. The petitioner deposed as P.W.1 and stated that on 25.08.2008 at about 9.30 a.m., while he was driving his friend's motor cycle bearing Reg.No.TN-20-AQ-9048 towards Thiruvallur Railway Station near Thiruvallur Sub Court Signal, the respondent Transport Corporation bus bearing Reg.No.TN-21-N-767 came at high speed and dashed against him.

9.2. On the other hand, the driver of the respondent transport corporation who deposed as R.W.1 stated that he stopped the bus in the signal. The petitioner who was riding the motor cycle through the one way turned towards east and dashed against the respondent-bus due to uncontrollable speed. According to R.W.1, the rash and negligent driving of the two wheeler at high speed by the Petitioner alone caused the accident.

9.3. However, the Police registered the case against R.W.1 only, as evidenced by Ex.P.1-FIR. Further the Police after investigation laid Ex.P.6-Charge sheet against the driver of the Transport Corporation bus who deposed as R.W.1 and that will go to show that prima facie, negligence on the part of the Transport Corporation bus driver alone caused the accident.

9.4. The Petitioner produced Rough sketch of the accident spot as Ex.P.4. It is pointed out by the Tribunal that the said Rough Sketch did not disclose as to where the respondent bus as well as Petitioner's motor cycle was standing. While the report given by Motor Vehicle Inspector (MVI) in respect of the respondent bus produced under Ex.P.5 stated no damage caused to bus, the petitioner failed to produce any M.V.I report in respect of the two wheeler in which he was riding. On that

basis, the Tribunal fixed the negligence at 50% each on both the drivers.

10. As stated earlier, the case regarding the accident is registered against the respondent bus driver only and charge sheet also laid against him. Further, the oral evidence of R.W.1 is that while his bus was standing, the motor cycle driven by the petitioner came through the one way at high speed and dashed against the respondent bus resulting in the accident. Admittedly, the accident has taken place near the signal spot. As such, no vehicle could have moved at high speed. In such circumstances, considering the fact that Ex.P.1-FIR as well as Ex.P.6-Charge sheet was laid against the driver of the respondent-Transport Corporation only and the accident has taken place near the signal in a busy road, this court is of the view that the negligence of both the drivers is responsible for the accident. In any event, the apportionment of negligence fixed at 50% each is not appropriate. Since as discussed in the preceding paragraphs, the criminal case has been registered only against the driver of the respondent corporation bus and charge sheet also laid against him and there is no independent eyewitness evidence available on record except for the evidence of two interested witnesses viz., the petitioner and the respondent-Corporation bus driver, taking judicial notice of overall circumstances, it will be appropriate to apportion the negligence between the Transport Corporation bus driver and the petitioner at 75% : 25% rather than 50% : 50% fixed by the Tribunal.

11. The Petitioner stated that he suffered the following injuries:-

1. Multiple fractures of the Right drunk bone.
2. Removal of the Right side kidney.
3. Multiple Fracture and crush of right hip joint bones.
4. Damage to the right side liver
5. Damage to the renewal systems.
6. Multiple injuries on several part of the body.

He also produced Ex.P.2-Copy of the Accident Report to show the nature of injuries suffered by him. It is stated the petitioner was admitted in Government Hospital on 25.08.2008 and was discharged on 09.09.2008 as evidenced by Ex.P.7 discharge summary. The Petitioner suffered fracture of ribs 7, 8 and 9 as well as fracture of L1 to L4. The petitioner underwent treatment as inpatient for the above said injuries. The Petitioner further stated that he took treatment in a private hospital in Perambur Road, Chennai, on 10.10.2008 and 11.10.2008. It is thus evident from the above documents that the petitioner was treated as inpatient for the injuries suffered by him in the accident as

stated above. The Petitioner also produced scan reports as Ex.P.10 and Ex.P.11 to prove the factum of fracture suffered by him. The Petitioner claims that he suffered permanent disability and is unable to do any work causing total loss of earning capacity and as such, the petitioner seeks for higher compensation.

12.1. The doctor who examined the petitioner personally and assessed his disability deposed as P.W.2 and produced Ex.P.13 disability certificate issued by him to the Petitioner. According to P.W.2 doctor, the Petitioner suffered permanent disability. However, the petitioner has not suffered any loss of limb. As such, considering the fact that the petitioner was working as car driver and taking into consideration the nature of injury, this court is of the view that the petitioner would be finding it difficult to drive as he used to, prior the accident and the disability suffered by the petitioner has to be treated as functional disability.

12.2 The doctor who deposed as P.W.2 clearly stated that only after personal, physical assessment of the injuries suffered by the petitioner, he fixed the permanent disability as follows:-

- (i) for the blood clot in right lung causing pain and prevent the petitioner from doing heavy work -20%
- (ii) For petitioner's stomach pain -20%
- (iii) For fracture in the hip portion - 30%
- (iv) L1, L2, L3, L4, and L5 bones broken and after treatment malunited- 20%

In all, P.W.2 doctor assessed the disability suffered by the petitioner at 90% and issued Ex.P.16 disability certificate.

13. Admittedly P.W.2 did not treat the petitioner. On 07.02.2012, P.W.2 physically examined the petitioner. P.W.2 also stated that the petitioner's walking condition is good. P.W.2 in his deposition before the court also admitted that the petitioner is working as Assistant to Advocate and he is continuously attending to his work in the courts. Further, the petitioner was examined by P.W.2 four years after the accident. Taking into consideration the above said admission of P.W.2 in his evidence and other attendant circumstances, it is appropriate to fix disability suffered by the petitioner at 50% instead of 40% fixed by the Tribunal. Taking into account the fact that the accident occurred during 2008 and the nature of injuries suffered by the Petitioner, it will be appropriate to fix Rs.3000/- per percentage of disability. Thus, towards permanent disability and the consequent loss of earning power, this court deems it fit to calculate the compensation as under:-

50% x Rs.3000/- = Rs.1,50,000/-.

14. The petitioner suffered fracture in L2,L3, L4 and also other grievous injuries. He was treated as inpatient in Government Hospital from 25.08.2008 to 09.09.2008 and thereafter for one day in a private nursing home at Perambur. In such circumstances, it will be appropriate to award Rs.20,000/- under the head "Pain and Suffering".

15. Considering the nature of injury particularly fracture suffered in L2, L3, L4 joints and other grievous injuries, the petitioner is entitled to Rs.20,000/- under the head "Loss of amenities". The Petitioner was working as driver. He claims that he was earning Rs.4000/- and also Rs.100/- per day as batta. Therefore, the notional monthly income of the Petitioner is fixed at Rs.4000/-. Due to accident he met with, atleast for 6 months he could have lost his earnings during the said period of treatment. Hence, under the head "Loss of income during the period of treatment for 6 months", Rs.24,000/- is awarded. Considering the nature of injuries suffered by the petitioner, it is just and proper to award Rs.10,000/- towards "Attender Charges" and also Rs.10,000/- towards "Nutritious Food".

16. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl.No	Head	Amount awarded by the Tribunal	Amount awarded by this Court
	I.Pecuniary Loss		
1.	Loss or earning capacity 40% x 2000	80,000/-	1,50,000/-
2.	Loss of income (Rs.4000 x 6 months)	24,000/-	24,000/-
3.	Attenders Help	5,000/-	10,000/-
4.	Nutrition Food	3,000/-	10,000/-
5.	Medical Bills	13,374/-	13,374/-
	II. Non Pecuniary Loss		
6.	Pain and suffering	10,000/-	20,000/-
7.	Loss of Amenity	10,000/-	20,000/-
	Total	1,45,374/-	2,47,374/-

Since negligence is fixed at 75% : 25% on the driver of the respondent-Transport Corporation driver and the Appellant/Petitioner, the petitioner is entitled to Rs.1,85,530/-.

17. In the result, the Civil Miscellaneous Appeal is Partly Allowed with cost as follows:-

- (i) The award of the Tribunal is modified and enhanced to Rs. 2,47,374/- from Rs.1,45,374/-. Since negligence is fixed at 75% : 25% on the driver of the respondent-Transport Corporation driver and the Appellant/Petitioner, the petitioner is entitled to Rs.1,85,530/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above modified enhanced award amount, the respondent/Transport Corporation is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the appellant/claimant is permitted to withdraw the amount awarded as above, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

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

Copy To

The Section Officer,
V.R.Section, High Court, Madras. (2 Copies)

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.14654

+1cc to Mr.A.Antony Arockiyaraja, Advocate, S.R.No.14556

C.M.A.No.135 of 2014

br(co)

cs/22/06/18