

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1695 of 2016

and

C.M.P.No.12856 of 2016

The Vice Chairman &
The Regional Managing Director,
APSRTC,
Tirupati, Andhrapradesh. ..Appellant/Respondent
Versus

Seenirajj ..Respondent/Claimant

Civil Miscellaneous Appeal filed against the judgment and decree dated 22.06.2015 made in M.C.O.P.No.5424 of 2012 on the file of the Motor Accident Claims Tribunal(IV Small Causes Court), Chennai.

For Appellant : Mr.G.V.Shoba
For Respondent : Mr.K.Maalikkanu

J U D G M E N T

The appellant has filed this appeal against the judgment and decree dated 22.06.2015 made in M.C.O.P.No. 5424 of 2012 on the file of the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury.

3. The case of the petitioner is that on 09.09.2012 at about 22 hours, when the petitioner who was walking on the Perundur Main Road towards Uthukottai, the respondent/Corporation bus bearing Registration No.AP-28-Z-3736 came at high speed and dashed against the petitioner resulting in grievous injuries suffered by him. According to the petitioner, negligence of the respondent bus driver alone caused the accident. The petitioner was aged 26 years and he was working as Supervisor in Michelin India Tamilnadu Tyres Pvt. Ltd, Gummidipoondi Taluk, Thiruvallur District, earning a monthly income of Rs.10,000/- per month. Since the petitioner suffered multiple fracture and injury all over his body, he was not able to attend to his normal avocation

as he suffered permanent disability. Hence, he seeks a sum of Rs.6,00,000/- as compensation from the respondent/Corporation.

4. On the other hand, opposing the petition by filing counter, the respondent/Transport Corporation contends that the claim of the petitioner is false and the accident occurred not due to negligence of the bus driver, but only due to the negligence of the petitioner. The respondent also disputed the claim of the petitioner about his age, nature of injury, loss of earning capacity and about his monthly income prior to the accident. Hence, the respondent/Transport Corporation seeks dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and medical experts as P.W.2 and 3 and produced document Exs.P1 to P13 to prove his claim. On the side of the respondent, driver of the bus involved in the accident was examined as R.W.1 and document Ex.R1 was produced. The Tribunal on the basis of the available materials on record found that the accident has occurred due to the rash and negligent driving of the respondent/APSRTC bus driver and fixed the quantum of award at Rs.7,38,000/- as payable to the petitioner. Aggrieved over the said finding of the Tribunal, the Andhra Pradesh State Transport Corporation has come forward with the present appeal.

6. The learned counsel for the Appellant/Transport Corporation/respondent contends that the claim of the petitioner is false and the entire medical records submitted by him are bogus. It is further stated that the doctors have not treated the petitioner at the time of injuries and hence, the disability certificate assessed at 70% for overall complications was based on reports and therefore, the compensation awarded is erroneous. It is also stated that in the absence of any records, the trial Court fixed the loss of income at Rs.78,000/- and thus, the learned counsel seeks to set aside the award passed by the Tribunal.

7. Per contra, the learned counsel for the respondent herein/petitioner contends that the Tribunal, after taking into consideration the entire materials available on record, held that due to the negligence of the Andhra Pradesh Transport Corporation bus driver, the accident occurred and thereby, held that the respondent-APSRTC is liable to pay compensation of Rs.7,38,000/- to the petitioner. It is further contended that since the findings of the Tribunal in respect of negligence and quantum are well founded, there is no need for interference. The learned counsel for the petitioner/claimant, thus seeks for

dismissal of the appeal.

8. Heard both sides and perused the records carefully.

9. The petitioner who deposed as P.W.1 stated that as he was walking along the Perundur Main Road, the respondent bus came at high speed and dashed against him. The police also registered the case against the respondent bus driver only as evidenced by Ex.P2 - F.I.R. Even though the driver of the respondent bus who deposed as R.W.1 denied negligence of his part, there is no other evidence to support his contention as the case has been registered against R.W.1 only and the evidence of P.W.1, is cogent and clear. In such circumstances, the finding of the Tribunal that the accident occurred only due to the negligence of the 1st respondent/driver is justified and the same needs no interference.

10. The petitioner who deposed as P.W.1 stated that immediately after the incident, he took treatment in G.H, Thiruvallur and thereafter, as an inpatient in a private hospital from 10.09.2012 to 16.09.2012. According to P.W.1 he suffered the following injuries: Head injury, Mandible fracture bilateral TMJ Fracture, Haemorrhagic contusion in bilateral of fronto parietal grey white matter, loss of teeth and multiple injuries all over the body. The petitioner further stated that his lower jaw was completely broken and two plates were also implanted in his lower jaw. The petitioner produced the AR Copy from G.H, Thiruvallur, as Ex.P1, discharge summary of private hospital as Ex.P3, and CT Scan reports as Exs.P6 and P7. The P.W.3 - Doctor, who examined the petitioner and assessed disability had issued Ex.P13 - Disability certificate and stated that the total disability suffered by the petitioner is 75%. It is evident from the available materials on record that the petitioner has suffered multiple fracture and also various injuries all over the body. Considering the nature of injuries and the disability assessed by the P.W.2-Doctor, as considered by the Tribunal, it is appropriate to fix the permanent disability at 70%. As per medical evidence, the petitioner has suffered dental injury and also fracture and underwent treatment for a long period. Hence, for the disability suffered by him, the loss of income is calculated at Rs.3,000/- per percentage as follows:-

$$70 \times 3000 = 2,10,000/-$$

11. Further, considering the nature of injury suffered by the petitioner his age and period of treatment undergone by him, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Disability	2,10,000.00	2,10,000.00
2	Pain and Suffering	1,00,000.00	60,000.00
3	Extra nourishment	75,000.00	35,000.00
4	Transport to Hospital	50,000.00	20,000.00
5	Damages to clothes	3,000.00	3,000.00
6	Attender Charges	30,000.00	30,000.00
7	Medical Expenses	82,000.00	82,000.00
8	Future Medical Expenses	35,000.00	35,000.00
9	Loss of Income	78,000.00	78,000.00
10	Loss of Future Prospects	50,000.00	-
11	Loss of Amenities	25,000.00	25,000.00
	Total	7,38,000.00	5,78,000.00

12. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is modified and reduced from Rs.7,38,000 to Rs.5,78,000/-.
- (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 reduced award amount, the appellant/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the injured claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(v) There will be no order as to cost in this appeal.

(vi) Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bri

To

1.The IV Judge Motor Accident Claims Tribunal,
IV Small Causes Court, Chennai.

copy to

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

+1 cc to Mr.G.V.Shoba Advocate sr 9669

+1 cc to Mr.K.Malaikannu Advocate sr 9660

C.M.A.No.1695 of 2016

kji(co)
aa05/04/2018

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