

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1936 of 2018
and
CMP.No.14901 of 2018

1. The Managing Director
Tamil Nadu State Transport Corporation
Kumbakonam.
2. The Managing Director
Tamil Nadu State Transport Corporation
Tiruchirapalli. Appellants/Respondents

Vs.

Kalaiyarasi Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 5.4.2017 passed in M.C.O.P.No.21 of 2016 by the Motor Accidents Claims Tribunal (II Additional District and Sessions Judge), Chidambaram.

For Appellants : Mr.D.Venkatachalam

For Respondent : Mr.D.Gopinath

JUDGMENT

Impugning the decree and judgment dated 5.4.2017 passed in M.C.O.P.No.21 of 2016 by the Motor Accidents Claims Tribunal (II Additional District Sessions Judge), Chidambaram, the present appeal is filed.

2. The facts leading to the filing of this appeal are narrated infra. The respondent herein filed the claim petition before the Tribunal alleging that on 5.10.2013, at about 1.20 PM, when the claimant was travelling as a passenger in a bus bearing registration No.TN-45-N-2091 from Jayankondan to Kurangudi Village near Meensuruti Nellithoppu Road, the bus bearing registration No.TN 68-N-0185 came from the opposite

direction in a rash and negligent manner and dashed against the bus and caused the accident.

3. The appellants herein denied the allegations in the claim petition and filed a detailed counter contending that the bus bearing registration No.TN 68-N-0185 was proceeding from Jayamkondan to Kattumannarkoil slowly and by observing traffic rules and at that time, the bus bearing registration No.TN-45-N-2091 came in the opposite direction and dashed their bus, causing the accident.

4. The learned Tribunal, by decree and judgment dated 5.4.2017 passed in M.C.O.P.No.21 of 2016, awarded compensation of Rs.1,40,000/-.

5. Assailing the same, the present appeal is filed by the Transport Corporation.

6. The learned counsel appearing for the appellants contended that the Tribunal ought not to have taken the permanent disability of the respondent at 10%, which is on the higher side, considering the simple injury suffered by her. He also submitted that a sum of Rs.50,000/- each awarded under the head pain and suffering and loss of amenities is on the higher side.

7. Per contra, the learned counsel appearing for the respondent reiterated the reasons that weighed with the Tribunal and prayed for dismissal of this appeal.

8. I heard Mr.D.Venkatachalam, learned counsel for the appellants and Mr.D.Gopinath, learned counsel for the respondent and perused the documents available on record.

9. It is not necessary to narrate the entire facts such as, as to how the accident had occurred and who is responsible for the accident and who is liable to pay compensation. It is for the reasons that the Tribunal has recorded findings on these facts in favour of the respondent/claimant. Secondly, the above aspects are not under serious challenge. Only quantum of compensation alone under challenge.

10. In the accident, the respondent sustained injuries on her head, chest, fracture of right distal radius and swelling on her right forehead and also injuries all over the body. The respondent had taken treatment as inpatient from 5.10.2013 to 16.10.2013 at Thanjavur Medical College Hospital and thereafter, as outpatient in Thanjavur Medical College Hospital and private hospital. The respondent has produced Ex.P3 medical records to show that she had taken treatment at Thanjavur Medical College

Hospital and during treatment as inpatient, she underwent surgery for the fracture of distal radius bone. The appellants have not disputed the injuries sustained by the respondent and also the period of treatment undergone by her.

11. No disability certificate has been produced by the respondent. However, considering the nature of injuries sustained by the respondent, the Tribunal has taken the disability at 10%. The appellants though disputed the 10% disability taken by the Tribunal and contended that the injuries sustained by the respondent are simple in nature, nothing has been produced to establish the same. Admittedly, the appellants have not examined any Doctor to show that the injuries sustained by the respondent are simple in nature. From Ex.P3, it is seen that apart from injuries on her head, chest and all over the body, the respondent had sustained fracture of right distal radius bone. Therefore, this Court finds that 10% disability taken by the Tribunal is not on the higher side. Considering the nature of injuries sustained by the respondent, there is no error in taking 10% disability by the Tribunal. Accordingly, Rs.30,000/- awarded by the Tribunal by calculating Rs.3,000/- per percentage of disability is maintained.

12. The Tribunal awarded Rs.50,000/- for pain and suffering. Admittedly, for the injuries sustained by the respondent, she had taken treatment from 5.10.2013 to 16.10.2013 as inpatient and during the period of treatment, surgery was also done. Considering the nature of injuries sustained by the respondent in the accident, she would have suffered pain and suffering during the period of treatment. Further, she would have suffered mental and physical shock at the time of accident. The pain and suffering are hardships, which is intolerable and cannot be expressed in terms of words and money cannot compensate the same. Hence, Rs.50,000/- awarded by the Tribunal for pain and suffering is reasonable and the same is maintained.

13. The Tribunal has awarded Rs.50,000/- towards loss of amenities. This Court feels that Rs.50,000/- awarded by the Tribunal for loss of amenities is slightly on the higher side. Therefore, the same is reduced to Rs.30,000/-.

14. The Tribunal has awarded Rs.10,000/- for transport charges and medical expenses. Considering the nature of injuries and the period of treatment undergone by the respondent, Rs.10,000/- awarded by the Tribunal for transport charges and medical expenses is maintained.

15. The Tribunal has not awarded any amount towards attender charges. Considering the period of treatment and also the fact

that the respondent would have been taken care of by the attender during the period of treatment, a sum of Rs.10,000/- is awarded for attender charges.

16. The Tribunal has not awarded any amount for extra-nourishment. Considering the nature of injuries and the period of treatment, it would be appropriate to award Rs.10,000/- for extra-nourishment. Thus, the total compensation of Rs.1,40,000/- awarded by the Tribunal is maintained, however, on the following heads:

Heads	Rs.
Disability	30,000.00
Loss of amenities	30,000.00
Pain and suffering	50,000.00
Extra-nourishment	10,000.00
Attender charges	10,000.00
Transport charges and medical expenses	10,000.00
Total	1,40,000.00

17. In the result, the Civil Miscellaneous Appeal is dismissed and award dated 5.4.2017 passed in M.C.O.P.No.21 of 2016 by the Motor Accidents Claims Tribunal (II Additional District Sessions Judge), Chidambaram is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
II Additional District and Sessions Judge
Chidambaram.

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

+1cc to M/S.D.Venkatachalam, Advocate Sr.58456
+1cc to Mr.T.Gopinath, Advocate SR.58444

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