

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1978 of 2015
and CMP.No.3300 of 2017

S.Nityanandan @ Anand

..Appellant/Petitioner

vs

The Managing Director
Metropolitan Transport Corporation
Pallavan House, Mount Road
Chennai-02

..Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Award and decree dated 16.07.2015 made in M.C.O.P.No.5040 of 2012 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For appellant : : Mr.A.A.Venkatesan

For Respondents : : Mr.S.Sivakumar

J U D G M E N T

The Appellant, who is the claimant before the Tribunal, has filed this appeal, challenging the Award and decree dated 16.07.2015 made in M.C.O.P.No.5040 of 2012 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, 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. The case of the Petitioner/injured is that on 27.07.2012 at about 21.00 hours, while the petitioner was waiting at the Adyar Depot Bus stand, the respondent bus bearing Reg.No.TN-01-N-5288 came there but proceeded without stopping at the bus stop and as the waiting passengers made a hue and cry, the bus was stopped 100 feet away from the bus stop and as the passengers including the petitioner were boarding the bus, the conductor blew the whistle and as the driver moved the vehicle suddenly, the petitioner who was attempting to get into the bus through backside foot board, lost

his grip, fell down and sustained multiple grievous injuries. The accident occurred only due to negligence of the respondent bus driver. The Petitioner was aged 38 years and by working as a Barber was earning Rs.15,000/- per month. The Petitioner further averred that due to the injuries suffered in the accident, he is unable to carry on his normal avocation resulting in loss of earning to him. Thus, the Petitioner sought for Rs.15,00,000/- as compensation from the respondent/Transport corporation.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the respondent Corporation contends that the accident occurred only due to negligence of the Petitioner and the respondent is no way responsible for the same. As the bus was proceeding in Route No.23C, while going in Sardar Patel Road, at about 21.00 hours, the bus stopped at Adyar Bus stand and after the passengers boarded the bus, the driver moved the bus slowly. At that time, the driver of the bus noticed a male person coming in a zig zag manner to board the running bus. The driver reduced the speed of the bus intending to stop it. Before that, the said person tried to board the bus, fell down and suffered injuries. Immediately he was admitted in the hospital. In the FIR, it is clearly stated that the passenger tried to get into the running bus, fell down and suffered injuries. The accident took place only due to the negligence of the injured. The injuries suffered by the Petitioner is not grievous and the compensation claimed by the Petitioner is highly excessive. Thus, the respondent 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 [not included in the Tribunal order], produced documents Ex.P.1 to Ex.P.6 to prove his claim. On the side of the respondent, R.W.1 was examined, but no document was produced. After analysing the evidence on record, the Tribunal found that the respondent bus driver as well as the Petitioner contributed to the accident and fixed the negligence ratio at 85% : 15% and passed award for a sum of Rs.2,24,500/- (85% of Rs.2,64,000/-) as payable by the respondent.

5. Being not satisfied with the quantum of the award and aggrieved over the negligence ratio fixed by the Tribunal, the Petitioner/claimant has come forward with the appeal seeking enhancement of the award amount, passed by the Tribunal.

6. The learned counsel for the appellant/Petitioner contends that the Tribunal failed to appreciate the evidence properly. The Tribunal failed to consider the fact that petitioner took treatment as inpatient from 27.7.2012 to

13.09.2012 and thereafter continuously he was taking treatment as outpatient, but the Tribunal awarded only Rs.50,000/- towards pain and suffering which is not reasonable. The Petitioner was earning Rs.15,000/- per month. But the Tribunal awarded only Rs.40,000/- under the head "loss of earning". The Tribunal, without any basis reduced the disability fixed by the doctor at 65% to 60%. The amount awarded under different heads is very nominal. Thus, the Petitioner/appellant sought for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the respondent/Transport corporation contends that the injuries suffered by the Petitioner is not as alleged in the petition and the award passed by the Tribunal is highly excessive. There is no need to enhance the same. The respondent sought for dismissal of the appeal.

8. This is only quantum appeal. Both sides have not seriously disputed the conclusion of the Tribunal regarding negligence issue. The Petitioner who deposed as P.W.1 stated that while he was getting into the bus, without noticing the same, the respondent bus driver moved the bus, resulting in his fall from the bus, resulting in grievous injuries suffered by him. The Police registered Ex.P.1-FIR/complaint against the driver of the bus only. It is clear from P.W.1 evidence and the contents of Ex.P.1-FIR that the respondent bus driver was at fault. However, the driver of the respondent bus who deposed as R.W.1 stated that the petitioner who was under influence of alcohol, tried to board the moving bus and inspite of best efforts by him to stop the bus, the petitioner fell down and suffered injuries. Thus, it is clear that the accident is admitted by R.W.1, who is the respondent bus driver.

9. Now it is to be seen as to whether the passenger fell down while boarding the moving bus. It is clear from Ex.P.6-Government General Hospital Case sheet that the Petitioner was under the influence of alcohol. However, the Police have registered FIR against the respondent bus driver only.

10. As stated above, the Petitioner was attempting to get into the moving bus and at that time, he fell down and suffered injuries. Admittedly, it is the duty of the bus crew to carefully monitor and prevent any passenger from getting into or getting down from the moving bus. It is contended that only because the petitioner was under influence of alcohol, he lost grip and fell down.

11. Taking into consideration the above facts and circumstances of the case and also keeping in mind that there is negligence on the respondent bus driver as well as on the Petitioner and the injuries suffered by the Petitioner, the

Tribunal fixed the negligence at 85% : 15% on the respondent bus driver and the Petitioner respectively which appears to be just and proper. The same needs no interference.

12. The Petitioner stated that he suffered (i) fracture of right leg (ii) fracture of femur right foot with skin loss (iii) fracture of left foot with skin loss and left ankle fracture and dislocation (iv) loss of muscles over right and left dorsum of foot (v) operated and crush injury both the foot (vi) multiple injuries all over the body. He underwent treatment as inpatient from 27.07.2012 to 12.10.2012 in Government Hospital, Chennai. Ex.P.2-Government General Hospital case sheet clearly shows that the petitioner suffered fracture in both legs. It is also clear that skin grafting was done in his right leg. The Petitioner claims that due to the injury suffered, he is unable to carry on his normal avocation as barber resulting in loss of earning. The Petitioner claims that the injury suffered by him has caused permanent disability.

13. The Petitioner to prove the disability suffered by him examined P.W.2/Dr.K.J.Mathizagan who assessed the partial permanent disability as 65%. According to P.W.2, fracture in both legs of the petitioner are malunited and hence, the petitioner is suffering from stiffness in his right thigh knee and ankle. The Petitioner will find difficulty in sitting cross legged, squatting and in climbing staircase. The right leg is shortened by 6 cms.

14. The Petitioner while deposing as P.W.1 expressed the above said difficulty. It is clear that the Petitioner suffered partial permanent disability. However disputing the same, the learned counsel for the respondent contends that even though the assessment of disability was done by P.W.2, it cannot be accepted in full because P.W.2 did not give treatment to the Petitioner.

15. The Tribunal, considering the evidence available on record concluded that the disability suffered by the Petitioner was at 60%. The Petitioner produced the Government Hospital case sheet as Ex.P.2 and Ex.P.6. The O.P.Note Book is produced as Ex.P.3. Photo with CD is produced as Ex.P.5. As such, considering the above material, the Tribunal is justified in fixing the disability at 60%.

16. The Petitioner stated that by working as a Barber, he was earning Rs.15,000/- per month. However, there is no proof available on record regarding his avocation and earnings. Thus, the Tribunal fixed the monthly income of the Petitioner at Rs.6000/- and the same is appropriate.

17. As stated earlier, the Petitioner suffered 60% disability and so it will be appropriate to compensate him at the rate of Rs.3000/- per percentage of disability instead of Rs.2000/- provided by the Tribunal. Accordingly, the disability compensation is as under:-
 $\text{Rs.3000/-} \times 60\% = \text{Rs.1,80,000/-}$

18. The Tribunal, considering the evidence available on record held that the Petitioner could not have attended to his normal work resulting in loss of earning to him and provided Rs.40,000/- and the said compensation amount is just and reasonable.

19. The amount provided by the Tribunal under other heads is also just and reasonable and therefore, the same is confirmed. The modified award amount is as under:-

Sl.No	Heads	Amount awarded by the Tribunal (Rs./-)	Amount awarded by this Court (Rs./-)
1.	Loss of income	40,000	40,000/-
2.	Transport to Hospital	10,000	10,000/-
3.	Extra nourishment	15,000	15,000/-
4.	Loss of amenities	10,000	10,000/-
5.	Pain and suffering	50,000	50,000/-
6.	Medical expenses	10,000	10,000/-
7.	Attender charges	9,000	9,000/-
8.	Disability	1,20,000	1,80,000/-
	Total	2,64,000	3,24,000/-
	Negligence ratio 85% : 15%.	2,24,400/-	2,75,400/-

20. In the result, the Civil Miscellaneous Appeal is Partly Allowed.

(i) The award amount is enhanced to Rs.2,75,400/- from Rs.2,24,400/-.

(ii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iii) The respondent/Transport corporation is directed to deposit the entire award amount along with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iv) The appellant/claimant is entitled to withdraw the award amount along with accrued interest.

(v) The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.

(vi) No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

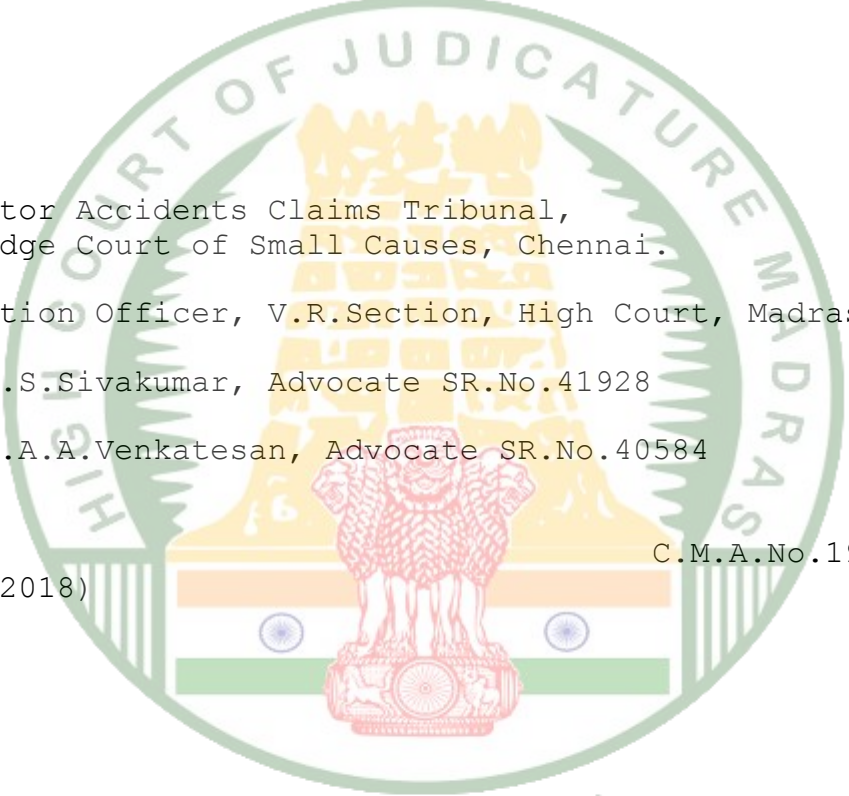
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To

1. The Motor Accidents Claims Tribunal,
III Judge Court of Small Causes, Chennai.
 2. The Section Officer, V.R.Section, High Court, Madras.
- +1cc to Mr.S.Sivakumar, Advocate SR.No.41928
+1cc to Mr.A.A.Venkatesan, Advocate SR.No.40584

GMV (01/10/2018)

C.M.A.No.1978 of 2015



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