

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1986 of 2018
and
CMP.No.15443 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam,
Kumbakonam Division and Taluk.

...Appellant/Respondent

Vs

V.C.Sekar

...Respondent/ Appellant

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 05.12.2015 passed in M.C.O.P.No.200 of 2010 by the Motor Accidents Claims Tribunal (Subordinate Judge), Mannargudi.

For Appellant : Mr.D.Venkatachalam

For Respondent : Mr.M.Senthil

JUDGMENT

Being aggrieved by the award of compensation of Rs.3,00,910/- for the injuries sustained by the respondent in the road traffic accident, the Tamil Nadu State Transport Corporation has filed this appeal.

2. Brief facts which are necessary for disposal of the appeal are as follows:

On 25.03.2009 at about 8.15 A.M., the respondent was proceeding in his Hero Honda motorcycle bearing registration No.TN-50 C 2984 and when he was nearing Rajamani Welding Workshop near Madappuram Irattai Kallarai, he stopped his two wheeler and while he was talking with Advocate Manoharan on the

road side, a bus bearing registration No.TN-49 N 1694 belonging to the appellant driven by its driver in a rash and negligent manner dashed against the respondent and the respondent was thrown out and sustained fracture on his right leg and also grievous injuries all over the body. Immediately, after the accident, he was admitted in Best Medical Centre Hospital, Tiruthuraipoondi, where he was given first aid and thereafter, admitted in Vinodhagan Memorial Hospital, Thanjavur, where surgery was done by inserting plate.

3. Regarding the accident, a criminal case in Crime No.126 of 2009 under Section 279 and 337 IPC was registered by Tiruthuraipoondi Police Station against the driver of the bus. At the time of accident, the injured was aged 50 years and was earning Rs.20,000/- per month by doing self-employment (old iron and plastic sale). Stating that the accident occurred due to the rash and negligent driving of the driver of the bus, the respondent had filed the claim petition claiming compensation of Rs.10,00,000/-.

4. Resisting the claim petition, the appellant filed counter stating that on 25.3.2009, the driver of the bus took the trip at 8.00 A.M. and while the bus was proceeding towards Tiruppur, a lorry bearing registration No.TN-28 3988 came from Madappuram Bus stand in a rash and negligent manner dashed on the right side of the bus. In order to avoid the accident, the driver of the bus swerved the same on the left and at that time the rider of the motorcycle himself dashed against the bus and invited the accident. Therefore, the driver of the lorry alone was responsible for the accident and a police complaint was lodged against the lorry driver at Tiruthuraipoondi Police Station. Therefore, the driver of the bus was no way responsible for the accident and the appellant was not liable to pay compensation to the respondent. It is stated that the respondent has to prove the treatment undergone by him on various dates. In the counter, the appellant denied the age, occupation, monthly income and also period of treatment undergone by the respondent.

5. Before the Tribunal, the respondent examined himself as P.W.1 and Dr.Rajagopal was examined as P.W.2 and Exs.P1 to P26 were marked. On the side of the appellant, no oral and documentary evidence was adduced.

6. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the bus and therefore, the appellant being the owner of the bus is liable to pay the compensation. Taking the disability as 32%, the Tribunal awarded total compensation of Rs.3,00,910/- payable with interest at the rate of 7.5% per annum from the date of petition

till the date of deposit. Aggrieved by the same, the appellant has filed this appeal.

7.I heard Mr.D.Venkatachalam, learned counsel for the appellant and Mr.M.Senthil, learned counsel for the respondent and perused the entire records.

8. Challenging the impugned award, the learned counsel for the appellant contended that the Tribunal ought not to have taken the permanent disability of the respondent as 32% and that a sum of Rs.33,000/- awarded under the head transportation is on the higher side. He would submit that Rs.75,380/- awarded by the Tribunal under the head medical expenses is also on the higher side. The learned counsel also submitted that the amount awarded under the heads pain and suffering and loss of earning are also on the higher side.

9. Per contra, the learned counsel for the respondent submitted that considering the nature of injuries sustained and the period of treatment undergone by the respondent, the Tribunal awarded total compensation of Rs.3,00,910/- and the same is just compensation. Therefore, there is no need to interfere with the same.

10. It is to be noted that the appellant Transport Corporation has not questioned the negligence fastened on the driver of the bus. On the other hand, the appellant is challenging only the quantum of compensation awarded by the Tribunal. Therefore, 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. Secondly, as stated supra, the above aspects are not under serious challenge.

11. In so far as the quantum, the Tribunal has taken the disability as 32% and awarded Rs.96,000/- under the head disability. In addition, the Tribunal has awarded Rs.25,000/- towards pain and suffering; Rs.75,380/- towards medical expenses; Rs.6,000/- towards extra-nourishment; Rs.33,000/- towards transport charges and Rs.6,000/- towards attender charges. The Tribunal also awarded Rs.59,530/- towards loss of earning. Totally, the Tribunal awarded a sum of Rs.3,00,910/- as compensation to the respondent.

12. In the accident, the respondent sustained fracture in his right knee and surgery was performed by inserting plate. In his evidence, the respondent deposed that due to injuries sustained in the accident, he was not able to stand and sit by

squatting and further he finds difficulty while sleeping. The respondent further deposed that he had taken treatment at Vinodhagan Hospital, Thanjavur from 25.3.2009 to 30.3.2009; 21.4.2009 to 26.4.2009; 13.7.2009 to 19.7.2009 and 18.8.2009 to 21.8.2009 as inpatient. Ex.P3 is the discharge summary, which shows that the respondent had taken treatment on various spells at Vinodhagan Hospital, Thanjavur.

13. In his evidence, P.W.2-Doctor deposed that due to fracture in the right knee, the respondent was often feeling pain and due to injury in the right knee the respondent was limping. Further, P.W.2-Doctor deposed that there was malunion in the right knee and he assessed the disability as 32%. Ex.P26 is the disability certificate issued by P.W.2-Doctor.

14. It appears that the respondent had taken treatment at Vinodhagan Hospital, Thanjavur from 25.3.2009 to 30.3.2009 and on 26.3.2009 surgery was done. Thereafter, the respondent was admitted on 21.4.2009 and had taken treatment till 26.4.2009 as inpatient. Again on 13.7.2009, the respondent was admitted and had taken treatment till 19.7.2009 as inpatient and on 14.7.2009 another surgery was done. Again on 18.8.2009, the respondent was admitted in the same hospital and had taken treatment till 21.8.2009 as inpatient.

15. The respondent alleged that at the time of accident, he was aged 50 years and was earning Rs.20,000/- by doing old iron business. The respondent had produced Ex.P18 to prove that he was running old iron shop in the name and style of Sakthivel old iron shop. According to the respondent, due to injuries sustained in the accident, he was not able to do his old iron business and his earning capacity was affected after the accident.

16. The documentary evidence produced by the respondent would clearly establish that in the accident the respondent sustained grievous injuries and had taken treatment on various spells and in fact two times surgery was performed. As stated supra, P.W.2-Doctor who examined the respondent had issued Ex.P26-disability certificate assessing the disability as 32%. Though the appellant disputed the percentage of disability, nothing has been produced to substantiate the same. Taking into consideration the disability sustained by the respondent, the Tribunal has awarded Rs.96,000/- by calculating Rs.3,000/- per percentage of disability, which in my considered view is reasonable.

17. The Tribunal awarded Rs.75,380/- towards medical expenses. Ex.P4 is the medical bill and as per Ex.P4, the respondent incurred a sum of Rs.63,118/- towards medical

expenses. The respondent had also produced Ex.P19-medical bill to show that he incurred a sum of Rs.12,262/-. Thus, the total sum of Rs.75,380/- awarded by the Tribunal for medical expenses is based on documentary evidence and therefore, the said amount is confirmed.

18. The Tribunal awarded Rs.33,000/- towards transport charges. Ex.P10 is the bills showing that the respondent incurred a sum of Rs.33,000/- towards transport charges. The Tribunal awarded Rs.59,530/- for loss of earning during treatment period. As stated supra, the respondent had taken treatment from 25.3.2009 to 31.8.2009 and during the said period, there was loss in his earning. Based on the income tax return filed during the year 2007-2008, the Tribunal has taken the average of income and awarded Rs.59,530/- for loss of earning for five months. Since the respondent had undergone treatment for nearly 5 months, a sum of Rs.59,530/- awarded by the Tribunal is reasonable and the same is maintained.

19. The Tribunal awarded Rs.25,000/- towards pain and suffering; Rs.6,000/- towards attender charges and another sum of Rs.6,000/- towards extra-nourishment. Considering the nature of injuries and the period of treatment undergone by the respondent, the amounts awarded by the Tribunal for pain and suffering; extra-nourishment and attender charges are quite reasonable and the same are confirmed. Thus, the total compensation of Rs.3,00,910/- awarded by the Tribunal is just and reasonable and the same is confirmed. For the foregoing discussions, this Court is of the view that there is no infirmity in the award of the Tribunal. No valid grounds have been made out to interfere with the award of the Tribunal and thus, the appeal is liable to be dismissed.

20. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
Sub-Court,
Mannargudi.

C.M.A.No.1986 of 2018 and
CMP.No.15443 of 2018

VBA (CO)
GSP (09/01/2018)