

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2781 of 2015
and
M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram,
Thiruvannamalai Mandalam,
Thiruvannamalai. Appellant/Respondent
...vs...

K.Balasubramanian @ Balan Respondent/Petitioner

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decretal Order dated 01.04.2015 made in MCOP.No.4730 of 2011 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai.

For Appellant : Mr.K.J.Sivakumar
Respondent : Mr.R.Varadhakamaraj

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 01.04.2015 made in MCOP.No.4730 of 2011 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai, the present appeal has been filed by the respondent Transport Corporation to set aside the award passed by the Tribunal.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioner is that on 21.11.2010 at about 20.30 hours, while the petitioner was driving the Ambassador Car bearing Registration No.TN-21-AY-0268, in Gingee - Tindivanam Road, from Thiruvannamalai towards Chennai, the respondent Transport Corporation Bus bearing Registration No.TN-32-N-2855 came at high speed in the

opposite direction dashed against the petitioner's car, causing him multiple grievous injuries. Due to the accident, the petitioner suffered Facial injuries, Lips sutured, Front upper side 3 teeth broken and suffered, Lacerations and Abrasions all over the body. The accident occurred due to the negligence of the respondent bus driver only. The petitioner was aged 60 years and by working as a Car driver was earning a sum of Rs.3,300/- per month. Due to the fracture and multiple injuries suffered by him, he is not able to carry on his driving profession resulting in loss of income to him. Thus, the petitioner sought for a sum of Rs.6,00,000/- as compensation from the respondent.

4. On the other hand, opposing the claim petition, the respondent Transport Corporation by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The respondent bus driver is no way responsible for the occurrence. The age, occupation and monthly income of the petitioner as alleged in the petition is denied. The amount claimed by the petitioner is highly excessive. Thus, the respondent Transport Corporation sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P13 to prove his claim. On the side of the respondent, the driver of the bus deposed as R.W.1 and produced Ex.R1 to contradict the claim of the petitioner.

6. The Tribunal, on the basis of materials available on record, found the negligence of the respondent bus driver only caused the accident, passed an award for a sum of Rs.5,89,300/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the respondent Transport Corporation has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant/ respondent Transport Corporation and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant Transport Corporation contends that the Tribunal failed to appreciate the evidence on record properly and wrongly fixed the liability on the respondent. The Tribunal ought to have rejected P.W.1's evidence which is not correct. The income of the petitioner was fixed on the higher side without any proof. The future prospects awarded is highly excessive. The disability fixed by the Tribunal as 35% is wrong. The amount awarded by the Tribunal under different

heads is highly excessive. Thus, the appellant Transport Corporation sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the petitioner/claimant contends that the petitioner being a driver having suffered fracture, he is not able to carry on his normal avocation and as such his disability should be assessed at 100%. Therefore, the Tribunal is justified in passing Award under dispute which is just and nominal. Thus, the petitioner/claimant sought for dismissal of the appeal.

10. It is only quantum appeal. Both side have not seriously disputed the conclusion of the Tribunal regarding the negligence aspect. The petitioner who deposed as P.W.1 clearly stated that the accident occurred due to the negligence of the respondent bus driver only. The police also registered Ex.P1 First Information Report against the respondent bus driver. Even though, the respondent bus driver subsequently stated to have been acquitted as per Ex.R1 correspondence between the Sub Inspector of Police, Roshanai Police Station and the respondent corporation, it is clear from P.W.1 evidence that the accident occurred only due to the high speed, in which the respondent bus was driven. It is also clear from the evidence of respondent bus driver who deposed as R.W.1 that the vehicles which were coming in the opposite direction dashed against each other. R.W.1 also stated that while negotiating a bend, he saw the petitioner's car coming at 30 feet distance. Admittedly, the right side of the car and the right side of the bus dashed against each other. As stated by R.W.1, he was taking a curve before the accident took place and if he has come at normal speed, he could have avoided the accident. In such circumstances, the Tribunal has correctly concluded that the respondent bus driver alone is responsible for the accident and the same needs no interference.

11. The petitioner states that he was 60 years old and by working as Driver was earning a sum of Rs.3,300/- per month. The petitioner has suffered injuries as stated above. He produced the discharge summary issued by JIPMER Hospital as Ex.P2 and the treatment records issued by JIPMER Hospital as well as Ramachandra Medical College Hospital, Chennai as Exs.P3 and P4 to show the nature of injuries suffered by the petitioner in the accident and he has also produced Ex.P2 to Ex.P8. It is clear from the records that the petitioner suffered multiple grievous injuries including fracture.

12.It is clear from Ex.P9 driving licence that the petitioner was born on 15.07.1951. As such, his age was 59 years at the time of the accident. In the claim petition, it is stated that the petitioner by working as Car Driver, was earning a sum of Rs.3,300/- per month. Except the driving licence, no other document is produced regarding the monthly income of the petitioner. In the petition itself it is stated that the petitioner has no permanent employer. In such circumstances, the Tribunal fixed the monthly income of the petitioner at Rs.9000/- and the same is challenged by the appellant. Keeping in mind the monthly income claimed by the petitioner in his petition and the fact that no proof of income is produced, the Tribunal is not correct in fixing the monthly income at Rs.9,000/-. However, keeping in mind the demand for driver and the fact that the accident occurred in the year, 2010, it will be appropriate to fix the monthly notional income of the petitioner at Rs.6,000/-. Considering the nature of injuries suffered by the petitioner, the petitioner could not have attended to his regular work atleast for a period of four months while taking treatment. Thus, the loss of income during treatment period is calculated as follows. Rs.6000/- x 4 = Rs.24,000/-.

13.The petitioner examined P.Ws.2 and 3 Doctors to prove the disability suffered by him. The Doctor, who deposed as P.W.2 stated that on personal examination of the petitioner and also by taking Ex.P10 X-ray, assessed the disability suffered by the petitioner at 50%. The disability certificate issued by P.W.2 is produced as Ex.P13. According to him, due to adherence and mal union of the tibial bone, the movements of the right knee and leg of the petitioner is reduced and restricted by 30 degrees. Further, the petitioner suffered injury on the left side chest, causing fracture of 4th rib and also injury to the right side chest causing fracture to 4, 5 and 6th ribs on the chest. Due to the said injuries, the petitioner finds difficulty in breathing and in that regard, the disability suffered is assessed 15%. Likewise, the injuries suffered in the right hand and the fracture of 5th Metacarpal bone, the wound has been cleaned and sutured, but the right hand grip is reduced and movement is restricted. For the same, P.W.2 Doctor fixed the disability at 10%. Thus, as per Ex.P11 Disability Certificate issued by P.W.2 Doctor, the disability suffered by the petitioner is 50%.

14.Likewise, the other Doctor who deposed as P.W.3 produced the disability certificate issued by him as Ex.P13 and stated that the petitioner lost two lower teeth and 5 upper teeth due to which, the petitioner find it

difficulty to eat hard things. Thus, he fixed the disability at 40%. Considering the above two Doctors evidence and the fact that the petitioner was a driver by profession and he was aged 59 years, it will appropriate to fix the functional disability of the petitioner at 35%. As the occurrence took place in the year, 2010, it will be appropriated to compensate him at the rate of Rs.2,000/- per percentage. As such, the disability compensation is calculated as follows. $35\% \times \text{Rs.}2,000/- = \text{Rs.}70,000/-$. Considering the fact that the petitioner has suffered fracture as well as two other injuries and took treatment as inpatient for a long time, he would have suffered pain and sufferings. As such, it will be appropriate to compensate him by granting Rs.10,000/- towards pain and sufferings instated of Rs.25,000/- given by the Tribunal. Considering the nature of injuries suffered by the petitioner and the long period of treatment, it will be appropriate to compensate him by providing Rs.15,000/- towards loss of amenities instead of Rs.25,000/- given by the Tribunal. Considering the fact that the petitioner was working as driver and he will not be able to carry on his profession and suffer loss of income in future and the petitioner was aged 59 years, it will be appropriate to add 10% of the income towards future prospects and multiplier 9 is to be applied. As such, the loss of earning capacity is calculated as follows. $\text{Rs.}6000/- \times 10\% = \text{Rs.}600/-$ $= \text{Rs.}6600/- \times 12 = \text{Rs.}79,200/- \times 9 = \text{Rs.}7,12,800/-$. As the petitioner suffered only 35% functional disability, the actual loss of income would be $\text{Rs.}7,12,800 \times 35 / 100 = \text{Rs.}2,49,800/-$. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent disability	-	70,000.00
2.	Medical Expenses	5,000.00	10,000.00
3.	Loss of income	27,000.00	24,000.00
4.	Transportation	10,000.00	10,000.00
5.	Extra nourishment	10,000.00	10,000.00
6.	Attender Charges	15,000.00	15,000.00
7.	Damage to Cloths	5,000.00	5,000.00
8.	Loss of future earning capacity	4,42,260.00	2,49,800.00
9.	Pain and sufferings	25,000.00	10,000.00

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
10	Loss of amenities	25,000.00	15,000.00
11	Disfigurement of hand and body	25,000.00	25,000.00
	Total	5,89,260.00	4,43,800.00

Accordingly, a sum of Rs.5,89,260/- awarded by the Tribunal is modified and the same is reduced to Rs.4,43,800/-.

15. In the result, this appeal is partly allowed. No costs. The amount of Rs.5,89,260/- awarded by the Tribunal dated 01.04.2015 made in MCOP.No.4730 of 2011 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai is reduced to Rs.4,43,800/-. The appellant Transport Corporation is directed to deposit the entire Award amount of Rs.4,43,800/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The Appellant Transport Corporation is entitled to withdraw the excess amount, if any paid. On such deposit, the respondent/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Ccc)

//True Copy//

Sub Assistant Registrar

rrg

To

VI Judge, Small Causes Court,
Motor Accident Claim Tribunal,
Chennai.

The Section Officer
high court, Madras (2 copies)

+1 cc to MR.K.J.SIVAKUMAR Advocate SR.NO. 41319

+1 CC TO V, MOHAN CHOUDARY Advocate SR.NO. 41201

C.M.A.No.2781 of 2015

ASK(06/09/2018)