

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.352 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Villupuram.

.... Appellant/Respondent

Vs

P.Sampath

.... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award 10.10.2013 passed in M.C.O.P.No.162 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate's Court), Cuddalore.

For Appellant : Mr.S.Sairaman

For Respondent : Mr.R.Muralidharan

O R D E R

Aggrieved by the award dated 10.10.2013 passed in M.C.O.P.No.162 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Cuddalore, the appellant-Transport Corporation has filed this appeal.

2. Brief facts are that on 16.04.2011, the respondent was travelling in the appellant's bus bearing registration No.TN-32-N-3245 from Trichy to Villupuram and when the bus was nearing Sarada College, Siruvachur, the driver of the bus drove the same in a rash and negligent manner and hit against the tree. As a result, the respondent sustained grievous injuries. Immediately, he was taken to Government Hospital, Perambalur and thereafter, the respondent has taken treatment at ABC Hospital, Trichy. Regarding the accident, a criminal case in Crime No.306 of 2011 was registered by Perambalur Police Station under Sections 279,

337 and 304(A) IPC against the driver of the bus. At the time of accident, the respondent was aged 50 years and working as Executive Engineer in Central Government Service and was earning Rs.35,000/- per month. Stating that the accident occurred due to the rash and negligent driving of the driver of the bus, the respondent filed claim petition claiming compensation of Rs.25,00,000/-.

3. Resisting the claim petition, the appellant filed counter stating that on 16.04.2011, the driver of the bus proceeding on its trip from Trichy towards Villupuram and at about 2.00 A.M., near Perambalur Dhanalakshmi College, unexpectedly one pedestrian crossed the road and to avoid accident with pedestrian, the driver of the bus suddenly turned the bus towards left side of the mud road and dashed against the tamarind tree. It is stated that the respondent has to put to strict proof that he was a bona fide passenger of the appellant's bus at the time of accident. In the counter, the appellant also denied the age, occupation, monthly income, nature of injuries sustained, period of treatment undergone, percentage of disability and medical expenses.

4. Before the Tribunal, both M.C.O.P.Nos.162 and 163 of 2012 were tried together. On the side of the claimants, 3 witnesses were examined and Exs.P1 to P17 were marked. On the side of the appellant-Transport Corporation, one V.Mathivanan, Inspector of Accident Section was examined as R.W.1 and no document was marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the bus and hence, the appellant was liable to pay compensation to the respondent. As far as quantum of compensation is concerned, the Tribunal awarded total compensation of Rs.3,82,583/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Assailing the award passed by the Tribunal in respect of M.C.O.P.No.162 of 2012, the appellant has filed this appeal.

6. The learned counsel for the appellant contended that the Tribunal erred in fastening the liability on the appellant as there was no negligence on the part of the driver of the appellant's bus. He would submit that in order to avoid hitting of pedestrian, the driver of the bus turned the same towards left side of the mud road and while turning, the bus hit against the tamarind tree and therefore, the accident not occurred on the negligence of the driver of the bus. The accident occurred unexpectedly. Therefore, the Tribunal erred in fastening the entire liability on the appellant. As far as quantum of

compensation is concerned, the learned counsel submitted that the total compensation of Rs.3,82,583/- awarded by the Tribunal is exorbitant and same is to be reduced considerably.

7. Per contra, the learned counsel for the respondent submitted that in the accident the respondent sustained 80% injuries and taking into consideration of the oral and documentary evidence, the Tribunal awarded Rs.3,82,583/- and the same need not be interfered with.

8. I have heard Mr.S.Sairaman, learned counsel for the appellant and Mr.R.Muralidharan, learned counsel for the respondent and also perused the materials available on record.

9. The points arise for consideration are:

- (1) Whether the Tribunal was right in fastening the liability on the appellant?
- (2) Whether the quantum of compensation of Rs.3,82,583/- awarded by the Tribunal is excessive?

10. Point No.1:

It is the case of the appellant that in order to avoid hitting of the bus on the pedestrian, the driver of the bus turned the same on the left side of the mud road and unexpectedly, the bus hit against the tamarind tree. On the other hand, it is the case of the respondent that the driver of the bus drove the same in a rash and negligent manner and hit against the tree, thereby caused the accident. Ex.P1 is the copy of FIR and Ex.P2 is the Motor Vehicle Inspector's report. Ex.P2 shows that the accident was not occurred due to mechanical defects. Therefore, it is safely be concluded that the accident occurred other than the mechanical defect. In Ex.P1-FIR, it has been categorically stated that the accident occurred due to the rash and negligent driving of the driver of the bus. In his evidence, the respondent deposed that the accident occurred due to the rash and negligent driving of the driver of the bus. The respondent has produced the driving licence of the driver of the bus and same was marked as Ex.P3. Though in his evidence R.W.1 deposed that the accident occurred unexpectedly, the same was not corroborated by any other documentary proof. In the absence of any rebuttal evidence, based on Exs.P1 to P3, the Tribunal has held that the accident occurred due to rash and negligent driving of the driver of the appellant bus. Since the said finding of the Tribunal is based on the documentary evidence, this Court held that the Tribunal was right in fastening the liability on the appellant, as the accident occurred due to rash and negligent driving of the driver of the appellant bus.

11. Point No.2:

In the accident, the respondent sustained (i) closed bilateral Ulna fracture; (ii) closed left medial malleolus ankle fracture; (iii) Left foot 5th metatarsal fracture; (iv) Right fibular neck fracture. Ex.P4 is the Accident Register issued by the Government Hospital, Perambalur. Ex.P5 is the discharge summary issued by ABC Hospital, Tiruchy. From Exs.P4 and P5, it is seen that the respondent sustained grievous injuries in the accident. P.W.3-Doctor who examined the respondent opined that the injuries are grievous in nature and he had assessed 80% disability and also issued Ex.P13-disability certificate. However, considering the nature of injuries sustained by the respondent and also finding that 80% disablement assessed by P.W.3-Doctor is on the higher side, the Tribunal fixed the disability at 30%. As against fixation of disability at 30% by the Tribunal, the respondent has not preferred any appeal and the respondent has no grievance over the same. Hence, 30% disability fixed by the Tribunal is maintained.

12. According to the respondent, at the time of accident, he was working as Senior Accountant and was earning Rs.35,000/- per month. The respondent had also produced Ex.P8-salary certificate. Since the respondent is a Government servant, he would have received the salary for the leave period and there was no loss of income. Therefore, the Tribunal was right in not awarding any amount towards loss of income.

13. The respondent has produced Exs.P6 and P7-medical bills to show that he had incurred Rs.1,74,583/- towards medical expenses. In his evidence, P.W.1 deposed that he had incurred Rs.1,74,583/- for medical expenses. To rebut Exs.P6 and P7, the appellant has not adduced any evidence. Considering Ex.P6 and P7-medical bills only, the Tribunal awarded Rs.1,74,583/- towards medical expenses. This Court does not want to interfere with the same.

14. Taking the disability at 30%, the Tribunal awarded total compensation of Rs.3,82,583/- under the following heads:

Heads	Rs.
Disability	60,000.00
Pain and suffering	40,000.00
Loss of amenities	40,000.00
Disfigurement	20,000.00
Attender charges	18,000.00
Medical expenses	1,74,583.00
Future Medical expenses	25,000.00

Heads	Rs.
Ambulance charges	5,000.00
Total	3,82,583.00

15. On a reading of the award, the Tribunal has failed to discuss anything while awarding amounts under the heads pain and suffering, future medical expenses, disfigurement, loss of amenities and attender charges. While granting compensation under various heads, it is the bounden duty of the Tribunal to discuss head wise and then grant the compensation. In the case on hand, as stated supra, the Tribunal has not discussed head wise while awarding compensation. However, considering the nature of injuries sustained by the respondent and also the period of treatment undergone by him, the compensation awarded by the Tribunal under the aforesaid heads warrants no interference. Thus, this Court finds that the total compensation of Rs.3,82,583/- awarded by the Tribunal is not on the higher side and it is only just compensation.

16. In view of the findings arrived at in Point Nos.1 and 2 that the Tribunal was right in fastening the liability on the appellant and also the total compensation awarded by the Tribunal is not exorbitant, the appeal filed by the appellant is liable to be dismissed. No valid grounds have been made out to interfere with the award of the Tribunal.

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

Sd/-
Assistant Registrar(CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vs

To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Cuddalore.
2. The Section Officer, VR.Section, High Court, Madras.

+ 1 cc to Mr. S.Sairaman, Advocate Sr.55910

+ 1 cc to Mr.R. Muralidharan, Advocate Sr.56133

C.M.A.No.352 of 2015

EV(CO)

EU(13/12/2018)