

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.408 of 2018

K.Kali

..Appellant/Petitioner

Vs.

Tamil Nadu State Transport Corporation  
(VPM) Ltd.,  
Rep. By its Managing Director,  
Villupuram.

..Respondent/Respondent.

Civil Miscellaneous Appeal filed u/s.173 of Motor Vehicles Act against the judgment and decree dated 17.03.2014 passed in M.C.O.P.No.2373 of 2010 on the file of Motor Accidents Claims Tribunal, (VI Small Causes Court), Chennai.

For appellant : : Mr.K.Varadha Kamaraj  
for Respondent : : Mr.K.J.Sivakumar.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Petitioner, challenging the judgment and decree dated 17.03.2014 passed in M.C.O.P.No.2373 of 2010 on the file of Motor Accidents Claims Tribunal, (VI Small Causes Court), Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 16.05.2010, at about 11.45 am, while the petitioner was proceeding as pillion rider in the Motor cycle bearing Reg.No.TN-21-AA-5076 in Gandhi Road, Sriperumbudur, the respondent bus bearing Reg.No.TN-21-N-0780 came at high speed, dashed against the two wheeler in which the petitioner was proceeding, causing him grievous injuries. The accident occurred due to negligence of the respondent bus driver only. The petitioner was aged 35 years and by working as mason was earning Rs.500/- per day. The petitioner claimed compensation of Rs.6,00,000/- for the injuries suffered by him.

3. On the other hand, opposing the petition, the respondent by filing counter contended that the accident did not occur as alleged by the Petitioner. The accident occurred due to negligent driving of the two wheeler rider who came at high speed and dashed against the respondent bus. The rider of the two wheeler did not possess valid driving licence. Hence, the respondent sought for dismissal of the Petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and doctor as P.W.2, produced documents Ex.P.1 to Ex.P.5. On the side of the respondent, the driver of the bus was examined as R.W.1, but no document was produced by the respondent.

5. The Tribunal on the basis of available evidence on record, found that the respondent bus driver alone caused the accident and passed award for a sum of Rs.1,58,000/- as compensation payable by the respondent. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

6. The learned counsel for the appellant/petitioner contends that the Tribunal failed to appreciate the evidence on record properly. The Tribunal without appreciating the evidence adduced on the side of the Petitioner awarded lesser amount as compensation. The learned counsel thus sought for enhancement of the quantum of the award by entertaining the appeal.

7. Per contra, the learned counsel for the respondent/Transport Corporation contends that the accident occurred only due to negligence of the rider of the two wheeler, but he is not made as party before the Proceedings. It is further contended that the respondent is not liable to pay any amount as the driver of the bus has not caused the accident. It is further stated that the amount awarded by the Tribunal itself is on the higher side. Thus the Respondent seeks dismissal of the appeal.

8. Heard both sides and perused the records carefully.

9. The Petitioner who deposed as P.W.1 stated that R.W.1 driver came at high speed and dashed against the two wheeler. However, R.W.1 deposed that the two wheeler rider came at high speed and dashed against the right side of the bumper of the bus. However, it is clear from contents of Ex.P.1-FIR and the averments of P.W.1 that the accident occurred due to the negligence of the driver of the respondent bus. In such circumstances, R.W.1 being interested person, his oral evidence cannot be accepted. Therefore, as far as negligence, the

finding of the Tribunal that respondent bus driver only caused the accident is confirmed.

10. The Petitioner states that he suffered fracture in right leg, fracture at patella of right leg and multiple injuries all over the body. P.W.2 doctor deposed that the petitioner finds difficulty to stand, walk and in carrying on his avocation of mason work and as such, assessed disability at 60%. The doctor issued Ex.P.5 disability certificate. However, the tribunal fixed 40% disability and awarded Rs.80,000/- as compensation. The same is disputed by the Petitioner. In such circumstances, this court, while considering the nature of injury and the treatment underwent by the Petitioner, is of the view that 40% disability fixed by the tribunal is just and proper, however, is inclined to award Rs.3000/- per percentage of disability. As such, the award under the head "Permanent disability" is modified as under:-  
Rs.3000/- x 40% disability =Rs.1,20,000/-.

11. The Petitioner claims that he was working as Mason and was earning Rs.500/- per day. However, the Tribunal fixed the notional income of Rs.4,500/- per month. Considering the avocation of the Petitioner and the general demand for masons, it will be appropriate to fix Rs.6500/- as monthly income of the Petitioner and accordingly, the loss of income for 3 months period during which the Petitioner could not have attended to his work, is calculated as under:-  
Rs.6500 x 3 months = 19,500/-.

12. Taking into consideration the facts and circumstances of the case, this court is of the view that the sum of Rs.20,000/- awarded under the head "loss of amenities" is excessive and the same is reduced to Rs.3,000/-. Going by the averments in the Petition that the Petitioner underwent implantation and taken services of attendants, the sum of Rs.3000/- awarded under the head Attender charges is enhanced to Rs.5000/-. Accordingly, the modified compensation payable to the Injured Petitioner-Kali is as under:-

| Sl.N<br>o. | Heads                       | Amount awarded<br>by the Tribunal | Amount awarded<br>by this Court |
|------------|-----------------------------|-----------------------------------|---------------------------------|
| 1.         | Loss of income for 3 months | Rs. 13,500/-                      | Rs. 19,500/-                    |
| 2.         | Extra Nourishment           | Rs. 5,000/-                       | Rs. 5,000/-                     |
| 3.         | Transportation              | Rs. 5,000/-                       | Rs. 5,000/-                     |
| 4.         | Damage to clothes           | Rs. 1,500/-                       | Rs. 1,500/-                     |
| 5.         | Attender charges            | Rs. 3,000/-                       | Rs. 5,000/-                     |
| 6.         | Medical expenses            | Rs. 5,000/-                       | Rs. 5,000/-                     |

| Sl.N<br>o. | Heads              | Amount awarded<br>by the Tribunal | Amount awarded<br>by this Court |
|------------|--------------------|-----------------------------------|---------------------------------|
| 7.         | Pain and suffering | Rs. 25,000/-                      | Rs. 20,000/-                    |
| 8.         | Disability         | Rs. 80,000/-                      | Rs. 1,20,000/-                  |
| 9.         | Loss of amenities  | Rs. 20,000/-                      | Rs. 3,000/-                     |
|            | Total              | Rs. 1,58,000/-                    | Rs. 1,84,000/-                  |

13. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is enhanced to Rs.1,84,000/- from Rs.1,58,000/-. The Appellant/Petitioner is entitled to award amount of Rs.1,84,000/- [Rupees One Lakh Eighty four thousand only] with 7.5% interest per annum from the date of petition till the date of realisation, excluding the delay period of 1115 days in filing the CMA. [Order dated 19.02.2018 in CMP.No.11152 of 2017, this court allowed CMP to condone the delay of 1115 days on condition that the petitioner/appellant shall forego interest for the delay period]

(iii) The respondent/Transport Corporation is directed to deposit the award amount along with accrued interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the appellant in this CMA/Petitioner-K.Kali is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-  
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1 The Judge, VI Court of Small Causes, Chennai.  
The Motor Accident Claims Tribunal, Chennai.

2. The Section Officer, V.R. Section,  
High Court, Madras. (2 copies)

+1cc to Mr.K.VARADHAKAMARAJ, Advocate, S.R.No. 24910

C.M.A.No.408 of 2018

EV (CO)  
TR(27/06/2018)