

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.629 of 2018
and CMP.No.5692 of 2018

The General Manager
Tamil Nadu State Transport Corporation
Limited, Railway New Station Road
Kumbakonam ..Appellant/respondent

Vs.

Srikanth ..Respondent/Petitioner

Prayer:- Civil Miscellaneous Appeal filed against the judgment and decree dated 21.09.2016 passed in M.C.O.P.No.47 of 2014 on the file of Motor Accidents Claims Tribunal, Subordinate Judge, Panruti.

For appellant : : Mr.D.Venkatachalam
for Respondent : : Mr.D.Senthilkumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the judgment and decree dated 21.09.2016 passed in M.C.O.P.No.47 of 2014 on the file of Motor Accidents Claims Tribunal, Subordinate Judge, Panruti.

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 while he was riding his two wheeler bearing Reg.No.TN-02-AT-8445 from North to South in the extreme left side of Vikiravandi to Kumbakonam Road near Mathrimangalam bus stop, the respondent bus bearing Reg.No.TN-68-N-0669 came from the opposite direction at high speed, dashed against the two wheeler which he was riding and as a result, he suffered grievous injuries. The accident occurred due to rash and negligent driving by the 1st respondent bus driver. The Petitioner who was aged 25 years by working as Store Manager in a Private concern, was earning Rs.22,000/- per month. Due to the injury sustained, he is not in a position to attend to his normal work which resulted in his loss of income. Thus the petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondent Corporation.

3. On the other hand, the respondent-Transport Corporation filed counter contending that the accident did not occur in the manner alleged by the Petitioner. A false complaint has been given against the respondent bus driver. The accident occurred due to negligence of the petitioner only. As the insurer of the two wheeler driven by the Petitioner is not added as a party, the petition is bad for non-joinder of necessary parties. On 02.09.2014, the driver of the respondent bus was proceeding at normal speed near Mathrimangalam bus stop and at that time, the petitioner who came in the two wheeler tried to overtake the bus, but on seeing another two wheeler, turned his vehicle to his left and in the process, dashed on the right front side of the respondent bus. As such, the accident occurred only due to the negligence of the Petitioner. Thus, the respondent is not liable to pay compensation. The age, avocation and income of the petitioner as claimed in the petition is not true. The petitioner did not possess valid driving licence. The claim of the Petitioner is exorbitant. Thus the respondent Corporation sought for dismissal of the claim petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.16 to prove his claim. On the side of the respondent, driver of the respondent bus involved in the accident deposed as R.W.1, but no document was produced. The Tribunal after analysing the evidence on record found the respondent bus driver alone caused the accident and passed award for a sum of Rs.10,42,185/-. Aggrieved over the said finding of the Tribunal, the respondent Transport Corporation has come forward with the present appeal.

5. The learned counsel for the Appellant/respondent-Transport Corporation contends that the Tribunal failed to appreciate the evidence properly and fixed the monthly income very high. The Tribunal ought to have fixed contributory negligence on the Petitioner. The fixing of 20% partial permanent disability by the Tribunal is on the higher side. There is no evidence to show that the future earning capacity of the Petitioner is affected. As such the claim of the Petitioner is exorbitant. Hence, the learned counsel for the Transport Corporation sought to set aside the award passed by the Tribunal, by entertaining the appeal.

6. On the other hand, the learned counsel for the respondent/Injured Petitioner contends that the petitioner suffered grievous injuries and he is unable to attend to his normal work, resulting in loss of income to him. The award passed by the Tribunal is just and proper. Thus, the petitioner/claimant sought for dismissal of the appeal.

7. The Petitioner who deposed as P.W.1 clearly stated about the manner in which the accident occurred which corroborates the averments in the petition. The Police also registered Ex.P.1 FIR against the respondent bus driver only. On the side of Respondent, R.W.1 driver of the respondent bus was examined. However, the Tribunal considering the evidence of R.W.1 found the same as contradictory and as such rejected the contention of the respondent. It is clear from the evidence of P.W.1 and the contents of Ex.P.1-FIR that the negligence of the respondent bus driver alone caused the accident. Thus the conclusion arrived at by the Tribunal about the negligence aspect is just and proper and the same needs no interference.

8. The Petitioner states that he suffered communitated fracture shaft of left femur and surgery done for reduction internal fixation with intra medullary inter locking nailing. He also stated that he suffers from frequent headache and giddiness. The Petitioner produced Ex.P.6-Copy of Accident Register, Ex.P.7-Discharge summary respectively. P.W.2 doctor issued Ex.P.12-Disability certificate, wherein the Partial permanent disability suffered by the Petitioner is stated as 40%. The Tribunal, on the basis of Ex.P.14 to Ex.P.16 - Salary details, fixed the monthly income at Rs.21,817/-. Taking into consideration the nature of injury and other attendant circumstances, the Tribunal by applying Schedule 2 of Section 163-A of Motor Vehicles Act, fixed 20% as partial permanent disability and applied multiplier of 12 and arrived at compensation towards permanent disability as follows:-

$21,817/- \times 12 \times 17 \times 20\% = \text{Rs.}8,90,134/-$

The compensation of Rs.8,90,134/- arrived at by the Tribunal towards "Partial permanent disability", appears to be just and proper and hence, the same is confirmed. That apart, the Tribunal, granted the following amounts under various heads as compensation for the injuries suffered by the Petitioner:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)
1.	Disability	8,90,134/-
2.	Pain and suffering	10,000/-
3.	Medical Bills	31,600/-
4.	Transport expenses	5,000/-
5.	Extra Nourishment	5,000/-
6.	Attender charges	5,000/-
7.	Loss of income during the period of treatment	65,451/-
8.	Future medical treatment	20,000/-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)
9.	Future Loss of earning	10,000/-
	Total	10,42,185/-

9. The award amount of Rs.10,42,185/- as compensation under various heads appears to be just and reasonable and no ground is made out by the Appellant/Transport Corporation to modify the same. The award passed by the Tribunal warrants no interference by this court and hence, the same is confirmed.

10. In the result,

(i) The Civil Miscellaneous Appeal filed by the Transport Corporation as appellant is dismissed.

(ii) The award amount passed by the tribunal at Rs.10,42,185/- is confirmed.

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

(iv) The appellant is directed to deposit entire award amount along with interest and cost, within four weeks from the date of receipt of a copy of this order, if not already deposited. The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount to the Petitioner-Srikanth, the first respondent in this Civil Miscellaneous Appeal.

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

Sd/--

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Subordinate Judge,

Motor Accidents Claims Tribunal, Panruti.

+1cc to Mr.D.Venkatachalam, Advocate Sr.No.30530

+2cc to Mr.D.Senthil Kumar, Advocate SR.No.30510

BR (CO)

EU:5.7.2018

C.M.A.No.629 of 2018