

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.1034 of 2007 and 1583 of 2008

C.M.A.No.1034 of 2007

Tamil Nadu State Transport Corporation Ltd.,
Salem Division -II.
Bharathipuram, Salem Main Road
Dharmapuri.

... Appellant/Respondent
..vs..

1.M.Ramu ... Respondent/Petitioner
2.Tamil Nadu State Transport Corporation,
Division-I,
Ramakrishna Road, Salem-636 007.

... Respondent/1st respdt.

(Cause title amended vide order of Court
dated 07.08.209 in M.P.No.2 of 2009)

C.M.A.No.1583 of 2008

M.Ramu

... Appellant/Petitioner
..vs..

1.Tamil Nadu State Transport Corporation Ltd.,
Salem Division -II.
Bharathipuram, Salem Main Road
Dharmapuri.

2.Tamil Nadu State Transport Corporation,
Division-I,
Ramakrishna Road, Salem-636 007.

... Respondents/Respondents

PRAYER IN CMA.NO.1034 OF 2007

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 30.10.2006 made in MCOP.No.435 of 2004 on the file of the Motor Accident Claims Tribunal/First Additional District Judge), Salem.

PRAYER IN CMA.NO.1583 OF 2008

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal Order dated 30.10.2006 made in MCOP.No.435 of 2004 on the file of the Motor Accident Claims Tribunal/First Additional District Judge), Salem.

For Appellant : Mr.S.V.Vasanthakumar
(Appellant counsel in CMA.No.1034 of 2007 and first respondent and 2nd Respondent counsel in CMA.No.1583 of 2008)

For Respondents : Mr.K.Kuppusamy
(Appellant counsel in CMA.No.1583 of 2008 and 1st respondent in CMA.No.1034 of 2007)

COMMON JUDGMENT

Aggrieved over the finding of the Tribunal, dated 30.10.2006 made in MCOP.No.435 of 2004 on the file of the Motor Accident Claims Tribunal/(First Additional District Judge), Salem, the first respondent-Transport Corporation filed the appeal in CMA.No.1034 of 2007 to set aside the award passed by the Tribunal and being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner filed the appeal in CMA.1583 of 2008 to enhance 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 14.12.2003 at about 4.00 hours, while the petitioner, who was employed as Driver in the second respondent Transport Corporation, was driving the bus bearing Registration No.TN-27-N-1363 from Namakkal to Salem and going near Sellapampatty Lakshmi Weigh Bridge, the first respondent-Transport Corporation bus bearing Registration No.TN-29-N-1358 came in the opposite direction at high speed and dashed against the bus driven by the petitioner causing multiple grievous injuries all over his body. Thereafter, the petitioner took treatment in a private hospital at Salem. At the time of accident, the petitioner was aged 45 years and was earning a sum of Rs.9,000/- per month. Due to the accident, his bothleg bone is broken and he has undergone three operations. Due to the injuries suffered by the petitioner, he

is unable to carry on his driving work and he has suffered loss of income. Thus, the petitioner sought for a sum of Rs.20,00,000/- as compensation from the first respondent Transport Corporation.

4. On the other hand, opposing the claim petition, the first respondent Transport Corporation by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The petitioner is bound to prove the nature of injuries suffered and his claim about the employment and income is denied. The accident occurred only due to the negligence of the petitioner himself. As such, the petitioner is not entitled to seek for compensation. Thus, the first respondent sought for dismissal of the claim petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P16 to prove his claim. On the side of the respondent R.W.1 was examined and no document was produced.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent Transport Corporation bus driver alone caused the accident, passed an award for a sum of Rs.3,87,000/- as compensation to the petitioner while dismissing the petition against the 2nd respondent. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with the appeal in CMA.No.1583 of 2008 seeking to enhance the award amount, while aggrieved over the findings of the Tribunal, the first respondent-Transport Corporation has come forward the appeal in CMA.No.1034 of 2007 seeking to set aside the award passed by the Tribunal.

7. Heard the learned counsel appearing for the petitioner/claimant and the learned counsel appearing for the first respondent-Transport Corporation in both the appeals and perused the materials available on record.

8. The learned counsel appearing for the appellant/claimant contends that the Tribunal failed to consider the evidence on record properly and passed an Award for a lesser amount. The fact that the petitioner being a driver having suffered permanent disability will not be in a position to carry on his avocation in future. The petitioner is still suffering from the injuries and there is no complete recovery for him so far. The petitioner has suffered loss of income. Hence, the petitioner seeks enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the first respondent Transport Corporation contended that the accident occurred only due to the negligence of the petitioner himself and as such he is not entitled to seek any enhancement. The finding of the Tribunal in respect of the negligence aspect is not proper. The Tribunal without any basis accepted the evidence of P.W.2 Doctor in fixing the disability suffered by the petitioner. The amount awarded by the Tribunal under the different heads is on the higher side. Thus, the first respondent Corporation sought for dismissal of the appeal filed by the petitioner in C.M.A.No.1583 of 2008 while entertaining the appeal in CMA.No.1034 of 2007 filed by them and to set aside the Award passed by the Tribunal.

10. Admittedly, the petitioner was employed as a driver in the second respondent Transport Corporation. It is also admitted that both the respondents are one and the same, but two different Divisions of the Tamil Nadu State Transport Corporation Limited. The petitioner who deposed as P.W.1 categorically stated that at about 4.00 a.m., while he was driving the bus towards Salem, the first respondent Transport Corporation bus came in the opposite direction at high speed and dashed against the petitioner's bus resulting in the accident. On the other hand, the driver of the first respondent Transport Corporation bus who deposed as R.W.1 stated that he was proceeding from Salem to Tiruchy and at that time, the bus driven by the petitioner coming from Madurai, dashed against the first respondent bus resulting in the accident. Thus, R.W.1 contends that the accident does not occur due to his negligence, but, it occurred only due to the rash and negligent driving by the petitioner himself. However, R.W.1 has not given any complaint with the police about the accident. Admittedly, Ex.P1 First Information Report is registered against him(R.W.1) only. It is also pointed out that the Department Proceedings was initiated against R.W.1 only. In such circumstances, considering the evidence of P.W.1 as well as R.W.1 and the contents of Ex.P1 First Information Report and other attendant circumstances, the Tribunal has correctly concluded that the negligence of the first respondent vehicle driver who deposed as R.W.1 alone caused the accident and the same is confirmed.

11. The learned counsel appearing for the petitioner/claimant contends that the Tribunal has passed an Award which is on the lower side. It is pointed out that the disability compensation provided at the rate of Rs.1000/- for 65% is on the lower side. The petitioner stated that he suffered multiple grievous injuries all over the body in the accident. The petitioner also stated that he is not able to do driving and attend to his normal work. The Doctor who examined

the petitioner has deposed as P.W.2 and according to him, the fracture of bone in right and left thigh of the petitioner have not reunited properly and the permanent disability suffered by him is 65%. Considering the fact that the petitioner was a driver and he has suffered 65% disability, it will be appropriate to compensate him at the rate of Rs.2000/- per percentage instead of Rs.1,000/- given by the Tribunal. Thus, on the basis of P.W.2 evidence and Ex.P7 wound certificate, which is not contradicted by any medical expert evidence on the respondent side. The disability compensation is provided is as follows:-

$$65\% \times \text{Rs.}2000/- = \text{Rs.}1,30,000/-.$$

12. The petitioner has suffered multiple grievous injuries as stated above. Having taken treatment as inpatient as evidenced by Ex.P3 medical records, It will be appropriate to provide a sum of Rs.30,000/- towards pain and sufferings undergone by him instead of Rs.15,000/- given by the Tribunal.

13. The Tribunal has elaborately discussed about the loss of income suffered by the petitioner, due to his inability to attend the work and also about earned leave and leave on loss of pay availed by him and compensated him for the same by calculating at the rate of Rs.8438/- per month, for a period of 25 months and 12 days. In the circumstances, the same is appropriate. Likewise, the Tribunal has provided medical expenses, Transport Charges and other expenses on the basis of evidence produced by the petitioner. The same is not seriously disputed by the first respondent Transport Corporation. Even though the first respondent contended that the Tribunal ought not to have granted loss of income for the period of leave availed by the petitioner, the said contention cannot be accepted as the petitioner has to avail leave on loss of pay and also exhaust the earned leave only due to injuries suffered in the accident which took place while he was on duty. In such circumstances, this Court finds no merit in the contention of the first respondent to reduce the amount awarded by the Tribunal under the above said heads. As such, the amount of Rs.3,87,000/- awarded by the Tribunal is enhanced to Rs.4,66,500/- as mentioned below.

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent disability	65,000.00	1,30,000.00
2.	Pain and sufferings	15,000.00	30,000.00
3.	Transportation	3,825.00	3,825.00
4.	Medical Expenses	88,400.00	88,400.00

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
5.	Loss of income	2,14,325.00	2,14,325.00
	Total	3,86,550.00	4,66,550.00

Accordingly, a sum of Rs.3,87,000/ warded by the Tribunal is modified and the same is enhanced to Rs.4,66,550/-.

14 C.M.A.No.1583 of 2008.

In the result, this appeal is allowed. No costs. The amount of Rs.3,87,000/- awarded by the Tribunal dated 30.10.2006 made in MCOP.No.435 of 2004 on the file of the Motor Accident Claims Tribunal/(First Additional District Judge), Salem is hereby enhanced to Rs.4,66,500/-. The 1st Respondent-Transport Corporation is directed to deposit the entire enhanced Award amount of Rs.4,66,550/- 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. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

14. C.M.A.No.1034 of 2007.

In the result, this appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Ist Additional District Judge,
Motor Accident Claim Tribunal,
Salem.

+2cc to Mr.K.KUPPUSAMY, Advocate, S.R.No.37297 & 37296

C.M.A.Nos.1034 of 2007 and
1583 of 2008

RK(CO)
TR(24/07/2018)