

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.922 of 2018

The Managing Director,
Tamil Nadu State Express
Transport Corporation,
No.2, Pallavan Salai, Chennai, ... Appellant/Respondent

...vs...

S.Keerthana
(Minor represented by his father
and next friend Gunasekaran) ... Respondent/Petitioner

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 18.01.2017 made in MCOP.No.495 of 2014 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tiruppur.

For Appellant : Mr.K.J.Shivakumar

For Respondents :

JUDGMENT

Being aggrieved with the findings of the Tribunal, dated 08.01.2017 made in MCOP.No.495 of 2014 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tiruppur, the respondent Transport Corporation filed this present appeal for setting aside the award passed by the Tribunal.

2. This appeal is disposed of at the time of admission stage itself.

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

4. The case of the petitioner is that on 04.02.2014 at about 02.00 hours, while the petitioner was travelling as a passenger in the respondent Transport Corporation bus bearing Registration No.TN-01-AN-0380, from Chennai to Salem, while going near Indira Nagar Bridge, Masinaickenpatti, in Salem to Ulunderpet Bye-Pass Road, due to high speed, in which the vehicle was driven by its driver met with an accident, resulting in the petitioner suffering grievous injuries and also loss of 3 teeth in his lower jaw. The accident occurred only due to the negligence of the respondent bus driver. The petitioner who was aged 21 years, was a student doing B.Tech Course and she has suffered grievous injuries. Thus, the petitioner sought for a sum of Rs.20,00,000/- as compensation from the respondent Transport Corporation

5. On the other hand, opposing the claim petition, the respondent Transport Corporation by filing counter contended that the accident does not occur in the manner alleged by the petitioner. While the respondent bus bearing Registration No.TN-01-AN 0380 was proceeding from Chennai to Mettupalayam at normal speed at about 02.15 hours on 04.02.2014, while going near the Masinaickenpatti, Ayodhyapattinam, a lorry bearing Registration No.TN-30-AW-2208 came in the opposite direction at high speed and on seeing that the respondent bus driver applied sudden brake and tried to stop the bus, but inspite of the best efforts, the bus moved further and touched the lorry. Hence, the lorry driver alone is responsible for the accident and as such, the respondent is not liable to pay any compensation. The claim of the petitioner about the nature of injuries suffered is denied. The claim of the petitioner is exorbitant. Thus, the respondent Transport Corporation sought for dismissal of the petition.

6. Before the Tribunal, the injured petitioner examined herself 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.P18 to prove her claim. On the side of the respondent, neither oral nor documentary evidence was let in.

7. The Tribunal, on the basis of materials available on record, found the negligence of the respondent bus driver alone caused the accident, passed an award for a sum of Rs.7,01,000/- as compensation to the petitioner. Being aggrieved over the said findings of the Tribunal, the respondent Transport Corporation has come forward with this present appeal.

8. Heard the learned counsel appearing for the respondent Transport corporation and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

9. The learned counsel appearing for the respondent Transport Corporation/Appellant contended that the Tribunal failed to appreciate the evidence on record properly and on the basis of P.W.1's evidence wrongly fixed the negligence on the driver of the respondent bus. Further, failure to implead the owner and insurer of the Lorry is bad for non-joinder of necessary parties and the petition is to be dismissed for the same. The Tribunal wrongly fixed the permanent disability suffered by the petitioner at 48% and the same is on the higher side. No valid proof is produced to prove the medical expenses incurred. The amount awarded by the Tribunal under different heads is highly excessive. Thus, the respondent sought for setting aside the award passed by the Tribunal by entertaining the appeal.

10. Per contra, the learned counsel appearing for the petitioner/claimant/respondent contends that it was only due to the rash and negligent driving by the respondent bus driver, the accident occurred and she has suffered injuries which affected her physical features. The petitioner further contended that due to the injuries suffered, she is unable to perform her duty and work normally. The amount awarded by the Tribunal under different heads is very nominal. Thus, the petitioner claimant sought for dismissal of the appeal.

11. According to the petitioner, on 04.02.2014, while she was proceeding as a passenger in the respondent bus, the same met with an accident in Salem - Ulundhurpet Bye-Pass Road and the accident occurred only due to the rash and negligent driving by the driver of the respondent bus. The petitioner who deposed as P.W.1 clearly stated about the manner in which the accident occurred. The police also registered Ex.P1 First Information Report against the respondent bus driver only. It is clear from P.W.1 evidence and the contents of Ex.P1 First Information Report that the accident occurred due to the negligence of the respondent bus driver. On the other hand, the respondent has not chosen to examine either the driver of the said bus or any other witness to disprove the claim of the petitioner. As such, the Tribunal correctly appreciating the evidence of P.W.1 and the contents of Ex.P1 First Information Report concluded that the negligence of the respondent bus driver alone caused the accident. The same is just and proper and there is no need to interfere with the same.

12. The petitioner who deposed as P.W.1 stated that she was working in Food Technology, College of food and dairy Tech, Chennai, as a B.Tech., student and earned a sum of Rs.7,000/-

per month. To substantiate the same, the petitioner examined one Navinkumar as P.W.3. He produced the appointment order as well as Salary certificate of the petitioner as Ex.P17 and Ex.P18. The Identity Card of the said P.W.3 Navinkumar is produced as Ex.P16. It is clear from Ex.P11 that the petitioner obtained professional B.Tech decree and it is clear from Ex.P8 and Ex.P9 that the petitioner was good student during SSLC and HSE and was working as stated above. Keeping in mind the above factor, the notional income of the petitioner is fixed at Rs.7,000/- per month by the Tribunal. The same appears to be just and proper. The petitioner stated that she suffered loss of 3 teeth in upper jaw, injuries in her left leg, left thigh and right leg both bone in the accident. The Doctor who deposed as P.W.2 stated that the partial permanent disability suffered by the petitioner is 58.8% and produced the disability certificate issued by him as Ex.P13. The X-rays and MRI Scan is marked as Ex.P14 and Ex.P15. It is evident from Ex.P2 to Ex.P4 discharge summaries that the petitioner suffered fracture of both bones in right leg and took treatment as inpatient. Since P.W.2 has not given treatment to the petitioner and no calculation sheet was attached with Ex.P13 disability certificate, the Tribunal reduced the disability fixed by the Doctor by 10% and fixed the disability at 48%. The same is just and proper. As there is no evidence to show that any functional disability is suffered by the petitioner, the Tribunal adopted the percentage system and awarded a sum of Rs.2,000/- per percentage of disability, awarding a sum of Rs.96,000/- towards disability compensation. Even though the appellant Transport Corporation contended that the Tribunal wrongly fixed the disability at 48% and awarded Rs.2000/- for each percentage, considering the nature of injuries suffered and the accident occurred in 2014, the calculation done by the Tribunal is correct and the same need no interference.

13. The learned counsel appearing for the appellant Transport Corporation further contended that the Tribunal has wrongly given a sum of Rs.5,50,000/- towards medical expenses. It is clear from Ex.P6 Medical Bills as well as other documents that the petitioner has suffered grievous injury and underwent continuous treatment. Therefore, the sum of Rs.5,50,000/- provided by the Tribunal on the basis of bills towards medical expenses of the petitioner is correct and it does not require any interference. As stated above, the Tribunal has awarded a just and proper compensation and no ground is made out by the respondent Transport Corporation to interfere and modify the Award passed by the Tribunal. As such, the appeal is to fail. The point is answered accordingly.

14. In the result, this appeal is dismissed. No costs. The Award passed by the Tribunal dated 08.01.2017 made in MCOP.No.495 of 2014 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tiruppur is hereby confirmed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

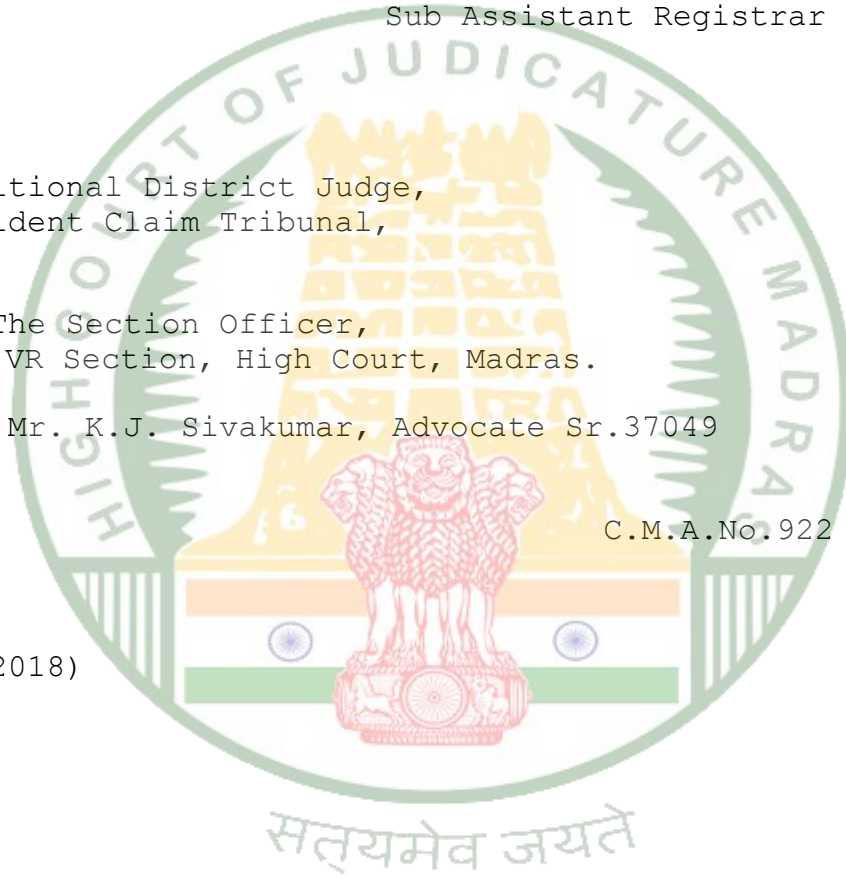
The I Additional District Judge,
Motor Accident Claim Tribunal,
Tiruppur.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr. K.J. Sivakumar, Advocate Sr.37049

C.M.A.No.922 of 2018

CA(CO)
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