

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2009

CORAM

THE HONOURABLE MR. JUSTICE. C.S.KARNAN

C.M.A.No.1335 of 2007

and

M.P.No.2 of 2007

The Managing Director
Tamil Nadu State Transport
Corporation Ltd.,
Bharathipuram Salem Main Road
Dharmapuri

... Appellant/Respondent

Vs

Kumar

... Respondent/Petitioner

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree Order dated 27.04.2006, made in M.C.O.P.No.68 of 2005, on the file of the Motor Accident Claims Tribunal, Sub-Court, Hosur.

For appellant : No appearance

For respondent : No appearance

J U D G M E N T

The above Civil Miscellaneous Appeal has been filed by the appellant/respondent, against the Award and Decree Order dated 27.04.2006, made in M.C.O.P.No.68 of 2005, on the file of the Motor Accident Claims Tribunal, Sub-Court, Hosur, awarding a compensation of Rs.30,000/-, with 7.5% interest per annum, from the date of filing petition to till the date of payment of compensation.

2. Aggrieved by the said award and decree, the appellant/respondent, The Managing Director, Tamil Nadu State Transport Corporation Ltd., Dharmapuri, has filed the above appeal praying the set aside the award passed by the Tribunal.

3. The short facts of the case are as follows:

On 10.12.2004, at about 12.40 hrs, the petitioner was walking on the road from Hosur to Bangalore and when he was nearing Ashok Leyland Main Gate, the TNSTC bus bearing registration No.TN29 N1465, belonging to the respondent, driven by its driver in a rash and negligent manner and coming from the opposite direction, at high speed, lost control and dashed against the petitioner. Due to the

impact, the petitioner sustained multiple injuries all over his body. He was taken to Government Hospital, where he was given first and and subsequently, he was taken to Nihmans Hospital, Bangalore and admitted there as in-patient. The accident took place only due to the rash and negligent driving of the driver of the TNSTC Bus.

4.The Hosur Traffic Investigation Wing Police has registered a case against the driver of the bus in Crime No.264/2004, under Sections 279 and 337 of I.P.C.

5.On account of the accident, the petitioner, often gets headache, giddiness, suffers loss of memory, has vomiting sensation and his face has been disfigured. He is unable to do any work as before. The petitioner has also sustained great mental shock, agony and permanent disability. The petitioner has therefore restricted his claim to Rs.3,00,000/- from the respondent's bus corporation with interest at the rate of 12% per annum from the date of filing the petition to till the date of payment of compensation, under Section 166 of the Motor Vehicles Act.

6.The respondent/The Managing Director, Tamil Nadu State Transport Corporation Ltd., Dharmapuri, in his Counter has resisted the claim stating that on 10.12.2004, the driver of the bus bearing registration No.TN29 N1465, drove the bus slowly, cautiously and observing all the rules of the road and keeping to the extreme leftside of road in Bangalore to Hosur NH Road towards Hosur. At about, 12.40 hrs, while thus proceeding near Ashok Leyland Main Gate, the petitioner, who was walking on the left side of the road, before the said bus, all of a sudden started to cross the road, without hearing the horn given by the driver of the said bus. The driver of the bus has not anticipated that the petitioner would cross the road suddenly. However, the driver of the said bus applied sudden brake to avoid hitting on the petitioner. But, before the bus could come to a stop, the petitioner came into contact with the bus and sustained simple injuries. The petitioner by his own negligence has involved himself in the accident. As such, the respondent is not liable to pay any compensation to the petitioner.

7.Further, the age, income and occupation of the petitioner were not admitted. The injuries sustained by the petitioner, period of treatment and claim for future medical expenses were without any basis and has to be proved by way of documentary evidence. Further, the claim is excessive and the interest rate claimed is high. The respondent has prayed for dismissal of the claim petition.

8.The Motor Accident Claims Tribunal framed two issues for consideration namely:

(i)Was the accident caused by the negligence of the driver of the respondent bus Corporation?

(ii)Is the petitioner entitled to get compensation?

If so, what is the quantum of compensation?

9. On the petitioner's side, two witnesses were examined as PW1 and PW2 and four documents were marked as Exs.P1 to P4. On the respondent's side, one witness was examined as RW1. No documents were marked.

10. The petitioner, on being examined as PW1 has adduced in his evidence that on 10.12.2004, at 12.40 hrs, that while he was walking on the mud road near Ashok Leyland, the Government Transport Corporation Bus coming from Bangalore to Hosur, had dashed against him and that the accident had been caused by the rash and negligent driving by the driver of the bus and in support of this claim has marked Ex.P1-FIR. On scrutiny of the Ex.P1, it is seen that the accident had been caused by the rash and negligent driving by the driver of the said bus and it was also mentioned that the said bus had dashed against the petitioner.

11. The Tribunal then considered the Counter given by the respondent, wherein it has been stated that the bus was driven slowly and at a moderate speed and that it was due to the attempt of the petitioner to cross the road suddenly, which had resulted in the bus to dash against the petitioner. Though RW1, the driver of the bus has stated in his evidence that it was only the negligence of the petitioner, who had tried to cross the road suddenly in front of the bus, which had resulted in the accident, the Tribunal held that if the driver had driven by bus at a slow and moderate speed as alleged, he could have applied the brakes and prevented the collision of the bus with the petitioner. As such, the Tribunal held that it was the rash driving of the driver of the bus and high speed at which the bus was driven, which had been the cause for the accident and so held that the accident was caused only by the negligence of the bus driver.

12. The PW1, in his evidence has stated that due to the accident, he had sustained injuries in his head, forehead, left arm, nose, shoulder and that he had taken first aid at Government Hospital, Hosur, initially and subsequently had taken treatment at Nihmans Hospital, Bangalore; that after the accident, he has not been able to work as before and marked Ex.P2, the copy of the accident registered by the Government Hospital, Hosur. On inspection of the above Ex.P2, it is evident that the petitioner had sustained simple injuries on his right side of the head, forehead, right eye, nose, in the said accident. On examination of medical report issued by Nihmans Hospital, which was marked as Ex.P3, it was confirmed that the petitioner had sustained four simple injuries, as had been mentioned in Ex.P2, in the said accident and no grievous injuries had been sustained by the petitioner in the said accident. Subsequently, the Dr.Gandhi, on being examined as PW2 has stated that the petitioner had sustained 35% permanent disability, but has not stated that grievous injuries had been sustained by the petitioner in the accident. As such, the Tribunal on considering that no grievous injury has been caused to the petitioner in the accident and only four simple injuries were caused held that the petitioner has not sustained any permanent disability. The Tribunal, also considering that these four simple injuries could heal during the passage of

time, held that the petitioner has not sustained any loss of earning capacity on this count, and so did not consider any award under the head of loss of future earnings. But, the Tribunal on considering that due to these injuries, the petitioner would have undergone mental agony and physical distress awarded a sum of Rs.24,000/- under this head. Further, on inspection of medical bills marked as Ex.P4, the Tribunal awarded a sum of Rs.4,000/- for medical expenses and the Tribunal awarded a sum of Rs.2,000/- for nutrition and transport expenses. In total, the Tribunal awarded a sum of Rs.30,000/- as compensation to the petitioner and directed the respondent bus Corporation to deposit the above award with interest at the rate of 9% per annum from the date of filing the petition to till date of payment, into the credit of the M.C.O.P.No.68 of 2005, on the file of the Motor Accident Claims Tribunal, Sub-Court, Hosur, within a period of two months from the date of its Order. Further, such award, after deposit with the Court, has to be invested in a Nationalised Bank for a period of three years. The Advocate Fees was fixed as Rs.1,250/- and the respondent was directed to pay the costs.

13.The learned counsel appearing for the appellant in his appeal has argued that the Tribunal had erred in holding that the accident had taken place only on account of the negligence of the driver of the appellant Corporation bus. The Tribunal had failed to note that the petitioner crossed the road suddenly without following any traffic rules and the driver of the appellant Corporation bus drove the bus in a moderate speed in a careful manner. The learned Judge should therefore have fixed at least contributory negligence on the part of both the parties instead of fastening the entire liability on the appellant Corporation alone. Further, the award of Rs.24,000/- granted by the Tribunal towards pain and suffering and mental agony is highly excessive, specifically when there is no grievous injuries sustained by the injured. Further, the award of Rs.4,000/- towards medical expenses for the treatment of bruises is unreasonable. As such, the award of Rs.30,000/- granted by the Tribunal is excessive and requires re-consideration.

14.For the foregoing reasons, facts and circumstances of the case, grounds raised by the learned counsel for the appellant in his appeal, the Court is of the view that the negligence was proved through Ex.P1, the FIR and evidence adduced by the claimant as PW1, wherein he had narrated the mode of accident. On the basis of this, the Tribunal had come to a conclusion that the accident had happened due to the negligence of the driver of the respondent's bus. As such, the Tribunal had awarded a compensation as below:

- 1.For pain and suffering : Rs.24,000/-
- 2.For medical expenses : Rs. 4,000/-
- 3.For transport and nutrition : Rs. 2,000/-

In total, the Tribunal had granted a sum of Rs.30,000/-, together with interest at the rate of 9% per annum from the date of filing the petition to till the date of payment of compensation. Regarding, the nature of injuries, the claimant had sustained injuries on his right side head, forehead, right eye, nose and left

hand, shoulder, for which he had taken treatment at Government Hospital, Hosur, and thereafter at Nihmans Hospital. Bangalore. This is evident on inspection of Exs.P2 and P3, ie. Wound Certificate and Medical Certificate respectively. One Dr.Gandhi, had also certified that the claimant had sustained 35% disability in the said accident. On the strength of Disability Certificate and taking into consideration the disability as 35%, this Court is of the view that the award granted by the Tribunal is fair and equitable and so has to be paid by the appellant/State Transport Corporation.

15.On 21.06.2007, this Court directed the appellant/State Transport Corporation to deposit the entire award amount together with interest and cost, within a period of six weeks, into the credit of the M.C.O.P.No.68 of 2005, on the file of the Motor Accident Claims Tribunal, Sub-Court, Hosur.

16.As the accident happened in the year 2004, it is open to the respondent/claimant to withdraw the entire compensation amount with accrued interest and cost, lying to the credit of the M.C.O.P.No.68 of 2005, on the file of the Motor Accident Claims Tribunal, Sub-Court, Hosur, by filing necessary payment out application, in accordance with law.

17.In the result, the Civil Miscellaneous Appeal is dismissed and the Award and Decree Order dated 27.04.2006, made in M.C.O.P.No.68 of 2005, passed by the Motor Accident Claims Tribunal, Sub-Court, Hosur is confirmed. Consequently, connected miscellaneous petition is also closed. No costs.

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Sd/-
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Hosur.
- 2.The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.1335 of 2007

JRG (CO)
EU 29.12.2009.