

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.1929 of 2010 and 1583 of 2010

AND

M.P.NO.1 OF 2010

Metropolitan Transport Corporation Ltd.,
Represented by its Managing Director,
No.2, Pallavan Salai,
Chennai - 600 002.Appellant in both CMAs/Respondent

Vs

D.Suresh Respondent in CMA No.1929 of 2010/
Petitioner in MCOP No.3051 of 2004

N.Mohan Respondent in CMA No.1583 of 2010
/Petitioner in MCOP NO.3052 of 2004

PRAYER in CMA.NO.1929 OF 2010: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 18.12.2008 passed in M.C.O.P.No.3051 of 2004 by the Learned IV Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai.

PRAYER in CMA.NO.1583 OF 2010: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed by the Motor Accident Claims Tribunal (IV Small Causes Court at Chennai) in M.C.O.P.No.3052 of 2004 dated 18.12.2008.

For Appellant in both CMAs : Mr.M.Anbalagan
for M/s.S.S.Swaminathan

For Respondent in both CMAs: Mr.S.Gangaram Prasad

COMMON JUDGMENT

The instant appeals have been filed by the Transport Corporation challenging the Award dated 18.12.2008, passed by the Motor Accident Claims Tribunal (IV Small Causes Court), at

Chennai in M.C.O.P.Nos.3051 of 2004 and 3052 of 2004 respectively.

2.The brief facts leading to the filing of the instant appeals are as follows:

(i)The respondents in CMA.Nos.1929 & 1583 of 2010 sustained injuries as a result of an accident on 27.05.2004 caused by a bus bearing Registration No.TN-01-N-1808 owned by the Appellant Transport Corporation.

(ii)The respondent in CMA.No.1929 of 2010 preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.3051 of 2004, seeking a compensation of Rs.2,00,000/-. Similarly, the respondent in CMA.No.1583 of 2010 preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.3052 of 2004, seeking a compensation of Rs.2,50,000/-.

(iii)The Motor Accident Claims Tribunal, by its Common Award dated 18.12.2008, directed the Appellant to pay the respondent in CMA.No.1929 of 2010 a sum of Rs.54,600/- together with interest at 9.5% per annum from the date of claim till date of realization and also awarded costs and also directed the Appellant to pay the respondent in CMA.No.1583 of 2010 a sum of Rs.71,000/- together with interest at the rate of 9.5% per annum from the date of claim till the date of realization and also awarded costs.

3.Aggrrieved by the Common Award dated 18.12.2008, passed in M.C.O.P.Nos.3051 of 2004 & 3052 of 2004, the instant appeals have been filed by the Appellant Transport Corporation disputing the quantum of compensation.

4.Heard Mr.M.Anbalagan, learned Counsel for the Appellant in CMA.No.1929 of 2010 and Mr.S.Gangaram Prasad learned Counsel for the respondent in both the appeals.

5.According to the learned Counsel for the Appellant, the Tribunal has given an erroneous finding that only due to the rash and negligent driving by the driver of the bus owned by the Appellant Transport Corporation, the accident had happened. According to him, the driver of the two wheeler bearing Registration No.TSK-1705 was also at fault and therefore there was contributory negligence on the part of the respondent also. According to him, without considering the same, the Tribunal has directed the entire compensation assessed by the Tribunal to be paid by the Appellant.

6.Per contra, learned Counsel for the respondent in both the appeals submits that there is a clear finding based on the oral and documentary evidence given by the Tribunal that only due to the rash and negligent driving by the driver of the bus, the accident had happened which resulted in injuries sustained by the respondent in both the appeals. Further, the learned Counsel for the respondent in both the appeals would contend that in respect of another claim made by another injured involved in the same accident in M.C.O.P.No.3050 of 2004, the Award in favour of the said claimant was passed by the Tribunal and the Appellant has not challenged the said Award before this Court and the findings of the Tribunal have now become final.

7.According to the learned Counsel for the respondent, in that Award also, the Tribunal directed the Appellant to pay interest at the rate of 9.5% per annum.

8.The learned Counsel for the Appellant would further contend that the interest awarded by the Tribunal is excessive and not in accordance with the settled principles of law. According to him, only 7.5% interest per annum is payable and not 9.5% per annum as directed by the Tribunal.

9.This Court after having considered the materials available on record and after having examined the impugned Award and after hearing the submissions of the respective learned Counsels observes the following:

(a)The nature of injuries sustained by the respondent in both the appeals have not been disputed by the Appellant before the Tribunal.

(b)The only contention raised by the Appellant in the instant appeals is that there was contributory negligence on the side of the respondents also and therefore, the Tribunal ought to have considered the same and directed the Appellant to pay only a portion of the compensation amount assessed by the Tribunal. The Appellant has not produced any evidence before the Tribunal to establish that the respondent is also equally responsible for the happening of the accident.

(c) The Tribunal has given a clear finding based on the oral and documentary evidence that only due to the rash and negligent driving by the driver of the bus owned by the Appellant Transport Corporation, the accident had happened.

(d) Regarding quantum of interest levied by the Tribunal, as rightly pointed out by the learned counsel for the respondent

in respect of another claim which forms part of the Common Award, the appellant has not challenged the same before this Court and therefore the findings regarding quantum of interest has now become final. This court is in agreement with the said contention.

10. In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeals. Accordingly, the appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed. However, there shall be no order as to costs.

11. It is also represented by the learned Counsel appearing on both sides that the Appellant Transport Corporation has already deposited the compensation awarded by the tribunal and respondents in both the appeals have withdrawn the amounts lying to the credit of respective MCOPs before the Tribunal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
IV Small Causes Court,
Chennai.

+1cc to Mr.S.S.Swaminathan, Advocate Sr.63542

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C.M.A.Nos.1929 of 2010 &
1583 of 2010 AND
M.P.NO.1 OF 2010

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