

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2018

PRONOUNCED ON : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1976 of 2008

J.Panneerselvam

.. Appellant

.Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Division II, Chennai-2.

.. Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act to set aside the fair and decretal order dated 27.02.2006 made in M.C.O.P.No.4724 of 2000 on the file of the Motor Accident Claims Tribunal, (II Judge, Court of Small Causes), Fast Track Court No.I, Chennai

For Appellant : Mr.A.A.Venkatesan

For Respondent : Mr.M.Deivanandam

JUDGMENT

The appellant before this court was the claimant before the Motor Accident Claims Tribunal Chennai,II Judge, Small Causes, Chennai.

2. By the impugned order, the appellant seeks for enhancement of the compensation awarded in the impugned fair and decretal order dated 27.2.2006 in M.C.O.P No. 4724 of 2000.

3. By the impugned order, the Tribunal has awarded only a sum of Rs.10,000/- to the appellant herein for the injury sustained by him in an accident involving the bus belonging to the respondent corporation.

4. The accident is said to have taken place on 5.5.2000 when the appellant tried to board the bus at the bus depot when the bus conductor blew the whistle without seeing the appellant trying to board the bus.

5. The appellant lost grip and fell and injured himself when the rear wheel of the bus grazed his left leg and

injured the appellant's left leg and the hip. It was specifically alleged that the accident was on account of the negligence of the crew of the bus.

6. Under these circumstances the appellant made a claim for a compensation of Rs.1,00,000/- from the respondent on various heads before the Tribunal.

7. The respondent however denied the accident. Meanwhile, the driver of the bus passed away six months after the accident.

8. Before the Tribunal, the appellant produced Exs.P.1 to P.4 namely copy of FIR, accident- diagram, discharge summary and a disability certificate given by P.W2

9. On behalf of the respondent, Ex.R1 to R4 were produced namely police notice issued to Thiruvottiyur Bus Depot, statement of the conductor and the bus driver and an internal enquiry report of R.W.2.

10. On behalf of the respondent, bus conductor and the supervisor were examined as witnesses who denied occurrence of the accident.

11. After considering the evidence on record the Tribunal concluded that the accident indeed had taken place as alleged by the appellant even though the respondent denied it.

12. However, the Tribunal has rejected the extent of injury caused to the appellant as per Ex.P4 Disability certificate given by Dr. Thyagarajan as it was not supported by a x-ray of the injury for a proper determination of the injury.

13. Heard the learned counsel for the appellant and respondent and perused the documents marked as Exhibits and the grounds of appeal.

14. Appellant seeks for enhancement and submits that the impugned order awards a meagre compensation of Rs.10,000/- merely because the x-ray for the injury was not produced by the appellant despite Ex.P3 Discharge summary and Ex.P.4 Disability certificate marked the appellant-P.W.1 and P.W.2 respectively.

15. The learned counsel for the appellant further submitted that the discharge certificate produced shows that the appellant suffered fracture of Femur of the left leg, injury over pelvis and left foot and multiple injuries all

over the body and therefore the Tribunal was not justified in ignoring these evidence to deny just compensation.

16. The learned counsel for the respondent-corporation has stated that the driver was not responsible for the accident.

17. The learned counsel for the respondent -corporation further submits that it is not possible for a person to have suffered 30% disability to get discharged within two days of admission into the hospital and therefore, the Tribunal was justified in awarding a minimum compensation of Rs.10,000 for the appellant.

18. He further states that the discharge summary does not indicate the nature of injury described in Ex.P.4 disability certificate marked through P.W.2 . It was submitted that the injuries suffered was not grievous in nature to warrant higher compensation and prayed for dismissal of the appeal.

19. Ex.P.3 discharge summary indicates x-ray was indeed taken for examining the nature of injury sustained by the appellant and compression bondage was advised to be given to the appellant. Since it is hand written rest of its content is not clear whether the appellant had suffered bone injury or not. It has been given by the Government Hospital and its author has not been examined.

20. During cross examination, no question has been asked either to the appellant as to why x-ray was not produced or whether PW-2 had seen or not seen the X-ray before giving Disability Certificate in Ex.P.4. It merely indicates that P.W.2 had not asked the appellant to take fresh x-ray.

21. P.W.2, has however opined in Ex.P.4 that the appellant was examined and the nature of injury restricted appellant's movement and that the appellant had suffered 30% permanent disability. The Tribunal has refused to believe the evidence of PW2 in the absence of the x-ray.

22. Ex.P.3 marked by P.W.2 has been given without the x-ray taken in the hospital. It is clear that while deposing evidence P.W.2 has admitted that the appellant was not asked to take fresh x-ray. Thus Ex.P.4 disability certificate appears to have given by P.W.2 without the benefit of x-ray and yet has assessed 30% permanent disability. It therefore appears to be issued in a causal manner. At the same time, the extent of injury and pain and suffering of the appellant

23. No useful purpose would be served in remanding the case back to the Tribunal to reconsider the evidence afresh at this stage to ascertain the injury at this point of time. The correct status of injury at the time of the accident cannot be ascertained now after 18 years due to ageing process and change in circumstances and natural course of event.

Therefore, Ex.P.4 disability certificate through questionable is still considered for awarding a just compensation to the appellant for the following reasons:

" i) In view of the decision of the Hon'ble Supreme Court in Nagappa vs. Gurudayul Singh (2003) 2 SCC 274 wherein it was held that it is the duty of the Courts and Tribunal to award just compensation.

ii) The compensation awarded to appears inadequate for a permanent disability suffered by the appellant."

24. Therefore, to meet the ends of justice, the compensation is enhanced by invoking Section 140 of the Act. Accordingly, the impugned order is modified and the compensation awarded is enhanced to Rs. 25,000/-from Rs.10,000/- already awarded by the Tribunal.

25. The respondent is therefore directed to pay the above differential amount together with interest at 7.5% from the date of claim within a period of four weeks from the date of this order to the appellant.

26. Accordingly, this Civil Miscellaneous Appeal is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kkd
To

II Judge, Small Causes Court, Fast Track Court No.I,
Chennai.

+1cc to Mr.M.Deivanandam, Advocate SR.NO.53457

MR(CO)
sm:31.8.2018

C.M.A.No.1976 of 2008