

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.1973 of 2013

&

M.P.No.1 of 2013

The Managing Director,
Karnataka State Transport Corporation
Limited,
Bangalore Division, K.H.Road,
Shanthi Nagar, Bangalore.

..Appellant/respondent

Vs.

Manjunath

..Respondent/petitioner

Prayer:

Civil Miscellaneous Appeal as against the judgment and decree dated 21.09.2012 passed in M.C.O.P. No. 476 of 2007 by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Krishnagiri.

For Appellant :: Mr.T. Thiyagarajan

J U D G M E N T

(Judgment of the Court was delivered by R. SUBBIAH, J.)

This appeal has been filed by the Karnataka State Transport Corporation as against the award dated 21.09.2012 passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Krishnagiri, in M.C.O.P. No. 476/2007 questioning the finding rendered by the Tribunal regarding the negligence aspect as well as the quantum of compensation awarded by the Tribunal.

2. When the matter is taken up for consideration, we find that the notice has not yet been served on the respondent. Hence, the learned counsel for the appellant sought time to serve notice on the respondent. But, we are of the opinion that since the matter is pertaining to the year 013, it would be appropriate to find out as to whether there is any merit in the

case to order for a notice. Hence, the matter is taken up for hearing and the learned counsel for the appellant is directed to make his submissions with regard to the merits of the case.

3. The respondent herein is the injured claimant.

4. The brief facts which are necessary for the disposal of the appeal are as follows:

It is the case of the respondent/claimant before the Tribunal that on 12.08.2003, at about 8.50a.m., when he was driving the Mahindra Minidor bearing Registration No. KA-05-B-3135, with tomato baskets, along with one Munivenkatappa and Gujappa, who were travelling in the said vehicle, being the owners of the said tomato baskets, near Sivanandha Asiramam in Bangalore to Sarjapura Main Road, the bus bearing Registration No. KA-01-F-6443, belonging to the appellant Transport Corporation, driven in a rash and negligent manner and at an uncontrollable speed, dashed against the Minidor Auto resulting in an accident. In the said accident, the claimant sustained grievous injuries. Apart from that, Munivenkatappa, who was travelling along with the claimant, suffered fatal injuries and died on the spot. The other traveller, namely, Gujappa, also sustained severe injuries. The claimant was taken to NIMHANS Hospital, Bangalore, for treatment. On diagnosis, it was found that the claimant sustained fronto parietal acute subdural haematoma with severe diffuse cerebral edema. He was discharged from the said hospital on 04.07.2003 and thereafter, admitted in Abhaya Hospital, Bangalore, for further management, where he was under treatment till 14.08.2003 and discharged on that date. However, again, the claimant was admitted in NIMHANS Hospital, Bangalore on 18.01.2004 and treated upto 27.03.2004 and even thereafter, on 13.11.2004, he was admitted in the said hospital and he has been taking treatment in a private hospital at Hosur and also at NIMHANS Hospital and Abhaya Hospital continuously. Hence, the claim petition was filed seeking compensation of Rs. 25 lakhs for the injuries sustained by the claimant in the accident.

5. The case of the claimant was resisted by the Transport Corporation by taking a defence that on the date of accident, the bus belonging to the appellant Transport Corporation bearing Registration No. KA 01 F 6443 was driven by its driver at a moderate speed and the said bus was proceeding from Kutaganahalli side towards Bangalore City Market via Sarjapur, observing the rules of the road and at about 6.50a.m., the driver of the bus had stopped the vehicle near Domasandra for alighting and boarding passengers, at which point of time, the claimant, who was at the wheels of Mahindra Minidor vehicle, suddenly, tried to overtake the stationed bus and dashed against

the right side of the stationed bus, thus causing the accident. Therefore, when the accident had occurred due to the rash and negligent driving of the claimant, the appellant Transport Corporation cannot be held solely responsible for the accident and cannot be mulcted with the liability to pay compensation. That apart, the Transport Corporation had also taken a defence that the amount awarded by the Tribunal is excessive and hence, sought dismissal of the claim petition.

6. In order to prove the claim, on the side of the claimant, his father was examined as P.W.1, as the claimant was unconscious and of unsound mind, and one Kadhar Basha, an eye-witness to the occurrence, was examined as P.W.2. That apart, one Dr. K. Sankar, Neurosurgeon, was examined to speak about the disability sustained by the claimant, by appointing an Advocate Commissioner. The Commissioner filed his report, which has been marked as Ex.C1 and the Doctor, through Ex.C2 certified that the claimant had sustained 100% disability. The Tribunal, after analysing the entire evidence on record, had come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation and by coming to such a conclusion, the Tribunal passed an award for a sum of Rs. 13,31,240/-. Aggrieved over the same, the present appeal has been preferred by the Transport Corporation.

7. It is the submission of the learned counsel for the appellant that in the claim petition, it has been stated that at the time of accident, one Munivenkatappa and another, by name Gujappa, had travelled along with him in the Mahindra Minidor vehicle and Munivenkatappa had sustained fatal injuries and died on the spot. But, Gujappa, who is said to have travelled along with the claimant, had not been examined. Even the author of the complaint, based on which, the FIR was registered, had not been examined. On the other hand, the claimant had examined only a person named Kadhar Basha, who had stated in his evidence that he was also travelling along with the claimant at the time of accident. But his name does not find place either in the claim petition or in the FIR lodged. Under such circumstances, the Tribunal ought to have negatived the evidence of P.W.2 and by doing so, the Tribunal should have come to the conclusion that the driver of the appellant Transport Corporation bus is not responsible for the accident. However, without doing so, the Tribunal had fixed the entire liability on the appellant Transport Corporation, which is not justified. Learned counsel would further submit that in the event of this Court coming to the conclusion that the accident had occurred only due to the rash and negligent driving by the driver of the appellant Transport bus, the amount awarded by the Tribunal has to be reduced since exorbitant sums have been awarded by the Tribunal

under different heads.

8. Keeping the submissions of the learned counsel for the appellant, we have meticulously gone through the entire materials on record.

9. On a perusal of the records, we find that, as rightly contended by the learned counsel for the appellant, in the claim petition, only the names of Munivenkatappa and Gujappa have been mentioned as the persons, who travelled along with the claimant in the Minidor Vehicle. But, from the evidence of P.W.2, we find that P.W.2 had categorically stated in his evidence that at the time of accident, he was also travelling along with the claimant and according to him, while he was travelling, the bus belonging to the appellant Transport Corporation came in a rash and negligent manner and hit the Mahindra Minidor Vehicle driven by the claimant. During cross-examination, not even a suggestion has been putforth to P.W.2 that he had not travelled along with the claimant at the time of accident. In the absence of any suggestion to the said effect, the submission made by the learned counsel for the appellant cannot be accepted. Therefore, we are of the opinion that the learned counsel for the appellant has not made out a case to come to the conclusion that the driver of the bus belonging to the appellant Transport Corporation is not responsible for the accident. That being so, we are in agreement with the finding rendered by the Tribunal on the negligence aspect that it was the driver of the appellant Transport Corporation, who had driven the vehicle in a rash and negligent manner resulting in the accident.

10. Now, coming to the quantum of compensation, on account of the accident, as could be seen from the Wound Certificate issued by Abhaya Hospital, Ex-A2, the claimant had sustained multiple lacerations in E1, M1, V1, S1; CT Dvsn. Left front parietal acute size with severe diffuse; cerebral edema and head injury. A Neurosurgeon, Dr.K. Sankar, was examined by appointing an Advocate Commissioner and the Doctor has certified through Ex-C2 Disability Certificate that the claimant has sustained 100% disability and he has categorically stated that the claimant is in a semi conscious state and it is extremely difficult to carry on his normal avocation and he has to spend the rest of his life only with the help of an attender. During cross-examination, no positive reply to the defence of the appellant Transport Corporation was brought out. However, the Tribunal, took the percentage of disability as 95%. The father of the injured victim, who was examined as P.W.1, has stated in his evidence that the victim was working as driver and earning a sum of Rs.5000/- per month. However, the Tribunal taking only Rs.4000/- as monthly income of the claimant, disability as 95% and by adopting multiplier 17, based on the age of the claimant,

at the time of accident, has awarded Rs. 7,75,200/- towards "Permanent Disability". Absolutely, we do not find any infirmity in the award passed by the Tribunal.

11. Besides, the Tribunal has awarded Rs. 75,000/- towards "Pain and Suffering". Considering the nature of injuries and the long duration of treatment undergone by the claimant, we do not think that the said amount is exorbitant or excessive. So also, the amounts awarded under other heads, namely, Rs.15,000/- towards "Extra Nourishment", Rs. 50,000/- towards "Attendant Charges", Rs. 30,000/- towards "Transportation", Rs.1,05,044/- towards "Medical Expenses", Rs.1000/- towards "Damage to Clothes", Rs.30,000/- towards "Loss of Income during treatment period", Rs.50,000/- towards "Loss of Amenities", Rs.1,00,000/- towards "Loss of Marriage Expectation" and Rs.1,00,000/- towards "Future Medical Expenses" are all reasonable and we do not find any infirmity warranting interference by this Court.

12. In fine, the Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. No costs. Connected M.P. is closed.

13. Since it is submitted that a portion of the award amount has already been deposited, the appellant is directed to deposit the balance amount before the Tribunal with proportionate interest and costs within a period of four weeks from the date of receipt of a copy of order. On such deposit being made, the respondent is permitted to withdraw the same.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nv
To

1. The MACT (Chief Judicial Magistrate), Krishnagiri
2. The Section Officer, VR Section,
High Court, Madras-104 (2 Copies)

+1cc to Mr.T.Thiyagarajan, Advocate in sr.no.10169 (25.04.18)

C.M.A. No. 1973 of 2013

SKV(CO)
CS/06/04/18