

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.321 of 2008
and
MP.Nos.1 and 2 of 2008

The Managing Director,
TamilNadu State Transport Corporation Ltd.,
Erode.

...Appellant/REspondent

Versus

R.Duraisamy

...Respondent/Petitioner

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.02.2007 made in M.C.O.P.No.1217 of 2004 on the file of the Motor Accident Claims Tribunal cum Fast Track Court No.4, Coimbatore sitting Tiruppur.

For Appellant : Mr. N.Anand

For Respondent : Mr. Ra.Srividhya

Mr. H.S.Mohamed Rafi

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J U D G M E N T

The Appellant/Transport Corporation has filed this appeal against the judgment and decree dated 05.02.2007 made in M.C.O.P.No.1217 of 2004 on the file of the Motor Accident Claims Tribunal cum Fast Track Court No.4, Coimbatore.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the

Tribunal. The case of the petitioner/claimant is that on 28.08.2004, while the petitioner/claimant was travelling as a passenger in the respondent bus bearing Registration No.TN-33-N-1155 from Mettupalayam to Sathiyamangalam, while going near Sirumughai Bannari Amman Hospital at about 22.45 hours, due to rash and negligent driving by the driver of the bus, the vehicle capsized, causing him multiple grievous injuries all over his body. The accident occurred only due to the negligence of the respondent bus driver. At that point of time, the petitioner/claimant was aged 45 years and by working as a weaver was earning Rs.5,000/- per month. Due to the fracture suffered in the right shoulder and the fracture in the right leg, he is unable to carry on his normal avocation, resulting in the loss of income. Thus, the petitioner/claimant seeks a sum of Rs.5,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the petitioner/claimant, by filing counter, the respondent/Transport Corporation contends that the accident did not occur as alleged by the petitioner/claimant. The respondent bus proceeding at a normal speed, while going near Nelipalayam Pirivu, the driver of the bus slowed down the bus to take left turn and as the driver notice deep water passage, attempted to stop the bus, but due to the sand spread in the road, the bus fell down in the road side pit. There was no negligence on the part of the respondent bus driver. The claim of the petitioner/claimant about the age, avocation and income is denied. The petitioner/claimant has to prove the injuries suffered by him. The compensation claimed by the petitioner/claimant is highly excessive. Thus, the respondent/Transport Corporation seeks for dismissal of the petition.

4. Before the Tribunal, the petitioner/claimant examined himself as P.W.1 and the medical expert as P.W.2 produced documents Exs.P.1 to P.5 to prove his claim. The respondent examined R.W.1, but no document was produced. After analysing the evidence on record, the Tribunal found that the negligence of the respondent bus driver alone caused the accident passed an award for a sum of Rs.1,22,200/- payable by the respondent to the petitioner/claimant. Aggrieved over the said finding of the Tribunal, the respondent/Transport Corporation preferred the appeal.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the respondent/Transport Corporation contends that the Tribunal erred in relying upon the evidence of P.W.1 regarding the manner of accident and wrongly concluded that the accident took place only due to the

negligence of the respondent bus driver. There is no independent evidence to prove the negligence of the respondent bus driver was the cause for the accident. The Tribunal failed to consider the age of the petitioner/claimant while complying with the multiplier method. The evidence of R.W.1, who was the driver of the bus was not considered properly by the Tribunal. The amount awarded under various heads is highly excessive. Thus, the respondent/Transport Corporation seeks to set aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioner/claimant contends that the Tribunal after analysing the evidence on record correctly fixed the negligence on the part of the respondent bus driver and passed an award providing just and fair compensation to the petitioner/claimant. There is no need or necessity to interfere with the same. Thus, the petitioner/claimant seeks for dismissal of the appeal.

8. It is clear from the evidence of P.W.1, who is the injured petitioner/claimant that the accident occurred due to the high speed in which the vehicle was driven by its driver. The Police also registered Ex.P.1 - F.I.R against the respondent bus driver only. The contents of Ex.P.1 - F.I.R corroborates the version of accident given by P.W.1. Even though the respondent bus driver who deposed as R.W.1 contended that while taking the curve near Nelipalayam Pirivu, he was proceeding at low speed only due to the existence of speed breaker and on seeing the vehicle coming in the opposite direction he moved to the left, applied brake, but the bus fell into the road side pit. Thus, R.W.1 stated that he is not responsible for the accident.

9. Assuming what R.W.1 stated is true and if he was coming at slow speed to take left hand curve, he could have easily stopped the bus from moving to the road side were it fell into the pit. There is nothing on record to show that the vehicle had any mechanical problem. In such circumstances, it is apparent that only due to rash and negligent driving at high speed the respondent bus driver was not able to control the vehicle and allowed it to fell into road sit pit. As such, the contention of the respondent/Transport Corporation that there was no negligence on the part of the driver is unacceptable and the finding of the Tribunal that the accident occurred only due to the negligence of the respondent bus driver is appropriate and the same is confirmed.

10. The petitioner/claimant stated that by working as a weaver he was earning Rs.5,000/- per month. He further stated that he suffered fracture in his right shoulder and grievous injuries in his chest and both legs. After getting first-aid in Government Hospital, Mettupalayam, he took treatment as

inpatient in Government Hospital Coimbatore. P.W.1 further stated that due to the injury suffered, he is unable to carry on his weaving work. In order to prove the injury suffered by him, he produced the Copy of the accident register as Ex.P.2 and the case sheet as Ex.P.3. The petitioner/claimant stated that he was suffering from permanent disability caused due to the injuries suffered in the accident.

11. To substantiate the same, the petitioner/claimant examined P.W.2 - Doctor, who stated that on 22.01.2007 he examined the petitioner/claimant in person and also Ex.P.5 - X-ray to assess the disability suffered by him. P.W.2 - Doctor stated that due to the fracture in the shoulder the movement of the right shoulder is affected and the classical bone is mal-united, the petitioner/claimant while finding difficulty in lifting his things in the right hand. The Doctor, assessed the partial permanent disability of the petitioner/claimant at 23.6%. The disability certificate issued by him is produced as Ex.P.4. There is no contra evidence let in by the respondent. Nothing is elicited during cross examination of P.W.2 to discredit his evidence. As such, considering the oral and documentary evidence on record, the Tribunal fixed the whole body disability of the petitioner/claimant at 18% and by applying the multiplier '15' calculated the loss of income at Rs.97,200/-. In view of the said facts, the said calculation appears to be just and proper.

12. The petitioner/claimant has taken treatment as inpatient from 29.08.2004 to 31.08.2004 as evidenced by Ex.P.3 - Discharge summary. He has suffered fracture in his right shoulder. He continued to take treatment as outpatient up to 27.09.2004. In such circumstances, for the pain and suffering undergone by him, the Tribunal has provided Rs.20,000/- and also provided under the head for Transportation, Nutritious food and Damage of clothes and Articles Rs.1,000/-, Rs.3,000/-, Rs.1,000/- respectively and the same is appropriate and does not warrant any interference. No ground is made out by the respondent/Transport Corporation to modify the quantum of the award passed by the Tribunal. Nothing is stated by the respondent/Transport Corporation as to how the award as stated above is excessive. Thus, this Court finds no need to interfere with the award passed by the Tribunal which is just and appropriate award. Thus, the appeal has to fail. Point is answered accordingly.

13. In the result, the order passed by the Tribunal dated 05.02.2007 made in M.C.O.P.No.1217 of 2004 on the file of the Motor Accident Claims Tribunal cum Fast Track Court No.4, Coimbatore is confirmed and the Appeal is dismissed. Consequently, connected miscellaneous petitions are closed. No

costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar
bri

To

1. The Presiding Officer,
The Motor Accident Claims Tribunal
cum Fast Track Court No.4,
Coimbatore sitting Tiruppur.

Copy To

1. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.N.Anand, Advocate SR.No.47926

+1cc to MrS.S.Swaminathan, Advocate SR.No.47466

C.M.A.No.321 of 2008

GMV (16/10/2018)

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