

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2840 of 2012
and M.P.Nos.1/2012 and 1/2014
and Cross Obj.No.123 of 2014

CMA.No.2840 of 2012:-

Metropolitan Transport Corporation Limited
Rep. By its Managing Director
Pallavan Salai
Chennai-2

..Appellant/Respondent

Versus

Pukhraj Jain

..Respondent/Petitioner

Cross Objection No.123 of 2014:-

Pukhraj Jain

..Cross Objector

Versus

Metropolitan Transport Corporation Limited
Rep. By its Managing Director
Pallavan Salai
Chennai-2

..Respondent

Prayer in both CMA and Cross Objection: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 and Cross Objection filed under Order XXXI Rule 22 of CPC are against the judgment and decree dated 09.12.2011 made in M.C.O.P.No.4032 of 2009 of 1997 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant/Transport Corporation

in CMA.2840/2012 : Mr.S.Sivakumar

For respondent/claimant

in CMA.No.2840/2012 & Respondent

in Cross Objection No.123/2014:Ms.Saleem Fathima &

/Cross Objector

:M/s.R.Manoranjitham

COMMON JUDGMENT

The Transport Corporation filed CMA.No.2840 of 2012 and the Claimant filed Cross Objection No.123 of 2014 against the

judgment and decree dated 09.12.2011 made in M.C.O.P.No.4032 of 2009 of 1997 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

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/cross objector is that on 01.07.2007 at about 5.45 p.m., while the petitioner was travelling in the respondent-transport corporation bus bearing Reg.No.TN-01-B-2537 while going at Elephant Gate Bridge road and Waltax Road junction, as the driver of the bus rode the above said bus in a careless manner, the petitioner was thrown out of the bus and suffered multiple fracture and underwent continuous treatment as inpatient in Government Hospital, Chennai, and subsequently at Apollo Hospital. The accident occurred only due to negligence of the respondent bus driver. The Petitioner was aged 50 years and was working as Electrical Supervisor, earning Rs.5000/- per month. Due to the injuries suffered, he is not in a position to attend to his normal avocation resulting in loss of income to him. Thus, the Petitioner sought for a sum of Rs.6,35,000/- as compensation from the respondent-Transport Corporation.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the respondent contends that the accident does not occur in the manner alleged by the Petitioner. The respondent bus bearing Reg.No.TN-01-N-2537 was proceeding at normal speed, near Elephant Gate Bridge Road at about 17.55 hours, and as the bus was turning to Waltax Road junction, a male passenger tried to get down from the moving bus at a non-stop place and in the process, he fell down from the bus and suffered injuries in his body. The Police registered FIR in Crime No.151/C-1/07 dated 01.07.2007 against the said male passenger only. The respondent is not liable to pay any compensation. The claim of the Petitioner about the nature of injury, period of treatment and the disability suffered by him is not true. The amount claimed is excessive. Thus, the respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.12, to prove his claim. On the side of the respondent, R.W.1 was examined, but no documents was produced. The Tribunal, after analysing the evidence on record, found negligence of the respondent bus driver as well as the Petitioner contributed to the accident, passed an award for a sum of Rs.4,34,100/- payable by the respondent to the Petitioner.

5. Aggrieved over the said finding of the Tribunal, the respondent/Corporation has come forward with the present appeal. While not being satisfied with the quantum of the award, the Petitioner/claimant has preferred Cross Objection No.123/2014.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the respondent/Transport Corporation contends that the Tribunal erred in holding that the bus crew failed to prevent the male passenger from getting down of the moving bus and wrongly fixed negligence in the ratio of 75% : 25% on the respondent transport corporation and the petitioner/claimant respectively. The amount provided under different heads is highly excessive. The Tribunal ought to have fixed the entire negligence on the Petitioner/claimant who is solely responsible for the accident. Thus, the respondent sought to set aside the award passed by the Tribunal by entertaining the appeal.

8. Per contra, the learned counsel for the Petitioner/claimant contends that the Tribunal failed to appreciate the evidence on record properly and the Tribunal erred in fixing contributory negligence on the petitioner/claimant. The Tribunal after holding that the petitioner is liable to the accident at 10% only, wrongly fixed negligence at 25%. The Petitioner took treatment as inpatient for a period of 31 days, underwent six surgeries and till date, he is taking treatment. The movement of his right leg is restricted but the Tribunal failed to take note of the same. The monthly income fixed is very low. The Tribunal ought to have provided for loss of amenities and amount granted under different heads is very low. Thus, the Petitioner/claimant/Cross Objector sought to enhance the quantum of the award by entertaining the cross objection.

9. The alleged accident occurred while the respondent bus was moving. The injured petitioner who deposed as P.W.1 stated that on 01.07.2007 while he was travelling as a passenger in the respondent bus bearing Reg.No.TN-01-N-2537 at Elephant Gate Bridge Road, as the bus was driven in a rash and negligent manner, the petitioner was thrown out of the bus and he fell down, suffered grievous injuries. Thus, the Petitioner contends that the respondent bus crew alone are responsible for the accident.

10. On the other hand, refuting the same, the driver of the bus while deposing as R.W.1 clearly stated that as he was turning the bus at Elephant Gate and Waltax Road junction, as the passengers started shouting, he immediately stopped the bus and found that one male passenger who was trying to get down from the moving bus, fell down and suffered injuries. R.W.1 further stated that on the basis of complaint given by a Traffic Police Constable, Ex.P.1-FIR was registered and it is clearly stated in the said FIR that the male passenger aged 50 years, got down from the moving bus and in the process fell down and suffered injuries. It is therefore clear from Ex.P.1-FIR that the petitioner tried to get down from the moving bus and in the process, fell down, suffered injuries.

11. Except for the interested evidence of the Petitioner as P.W.1, there is no evidence let in by the Petitioner to prove the manner of accident. It is further pointed out by the learned counsel for the respondent corporation that it is impossible to drive the bus at high speed at the occurrence spot where the traffic is highly congested and that too, in the evening times.

12. The learned counsel for the respondent further pleaded to take judicial notice of the nature of heavy traffic at Elephant Gate and Walltax road junction. It is stated that there was heavy traffic in the said Main road particularly when the accident took place at about 5.40 p.m.,

13. On the other hand, refuting the same, the learned counsel for the petitioner/claimant contends that duty is cast on the crew of the respondent bus to prevent any person from travelling by standing in the footboard and it is their duty to prevent anybody from getting down or alighting the moving bus. It is true that the conductor and the driver of any transport vehicle has to ensure that the passengers do not board or alight the bus while it was on the move. It is also true that the police have registered Ex.P.1-FIR against the petitioner only. However, there is no evidence as to whether any charge sheet was filed and the result of the criminal case is not known. In such circumstances, mere filing of the FIR only will not be a conclusive proof that the petitioner's negligence alone caused the accident. The learned counsel for the Petitioner/claimant also pointed out that as the petitioner was injured and rushed to the Hospital, a false complaint was registered against him. The Petitioner contends that Ex.P.1-FIR ought to have been registered against the said driver of the

Transport Corporation. There is no ground to show that a false complaint was given by Traffic Constable against unknown person. As such, the contention of the respondent in that regard is unacceptable. It is further pointed out by the learned counsel for the Petitioner that the Tribunal, after fixing the negligence on the petitioner to the extent of 10% initially in the order, subsequently, fixed the negligence on the petitioner at 25% and the same is not proper. It is true in paragraph 6 of the order, the Tribunal after fixing 10% negligence on the Petitioner, in the next line itself fixed the contributory negligence of the Petitioner at 25%.

14. As a residual argument, the learned counsel for the respondent/transport corporation contends that in the Tribunal order, in various places, contributory negligence of the Petitioner is stated only as 25% and it is only due to typographical error, it is stated as 10% in Paragraph 6 only.

15. Considering the rival contentions, it is apparent that the Petitioner is on fault as stated in Ex.P.1-FIR since he got down from the moving bus. Keeping in mind, the Criminal case registered against the Petitioner and that the accident occurred while the bus was moving and the duty is on the respondent bus crew to prevent the passengers from alighting or boarding the moving bus, it will be appropriate to fix negligence on the respondent crew as well as the Petitioner/claimant and in the circumstances stated above, it will be appropriate to fix the negligence at 75% : 25% on the respondent/Transport Corporation and the petitioner/claimant respectively. The conclusion of the Tribunal in that regard needs no interference.

16. The Petitioner states that he suffered multiple fracture and immediately after the accident, he was given treatment in Government Hospital, Chennai, and then shifted to Apollo Hospital, where he was treated as inpatient from 01.07.2007 to 23.07.2007. The Petitioner also produced Ex.P.2-Accident Register copy to prove his claim about the injuries suffered by him. The Petitioner after undergoing surgical treatment in the Apollo hospital, was discharged on 23.07.2007. Subsequently, the petitioner was admitted twice on 20.02.2008 and 18.09.2008, underwent surgical treatment on both occasions. The Petitioner to prove the same, produced Ex.P.4 to Ex.P.7-Discharge summary. The injured petitioner, while deposing as P.W.1 stated that he finds difficulty in sitting down, climbing stair case and walking for long distance. It is further stated by P.W.1 that due to injury suffered, he is unable to attend to his avocation of Electrical Supervisor work. Due to the physical disability suffered, the petitioner states that he is

not able to work regularly and suffered loss of income.

17. The Petitioner examined P.W.2/doctor to substantiate his claim of disability suffered due to the injuries occurred in the accident. P.W.2 states that the Petitioner suffered fracture of both bone in the right leg and he underwent surgical treatment for fixing screws. Due to the surgery, the Petitioner is suffering from pain and the movement of the right leg is restricted beyond 100 degrees. Further P.W.2 also stated that the Petitioner cannot run or walk fast and on the basis of Ex.P.12-X ray taken by him and on physical examination of the Petitioner, fixed the disability at 40%. The said disability certificate is produced as Ex.P.11.

18. Admittedly, P.W.1 was aged 50 years and was working as Electrical Supervisor. As stated above, he suffered fracture of both bones in his right leg and injury in his left leg and further plate has been fixed and removed and in such circumstances, the petitioner will find difficulty in moving around as stated by P.W.2. Further the movement of right leg of the petitioner is restricted. As such, he will find difficulty in attending to Electrical Supervising work. Therefore, in the absence of contra medical evidence, the Tribunal is justified in accepting P.W.2's assessment of disability at 40%. As the accident occurred in 2007, the Tribunal adopting percentage system, provided Rs.2000/- per percentage and awarded disability compensation of Rs.2000/- x 40% = Rs.80,000/- to the Petitioner. The same is just and proper which needs no interference.

19. Admittedly, the Petitioner underwent treatment as inpatient for 31 days and he has suffered 40% disability. The movement of his right leg is restricted. In such circumstances, the Tribunal is justified in providing Rs.40,000/- under the head "Pain and suffering" and the same needs no interference.

20. The Petitioner claimed Rs.5000/- as his monthly income. The Tribunal has fixed the monthly income at Rs.4,500/-. As such, in the absence of any proof produced by the Petitioner, the Tribunal is justified in fixing the monthly income at Rs.4,500/-. The Tribunal, considering the fact that the petitioner underwent treatment as inpatient for nearly one month concluded that he could not have worked for at least three months and awarded compensation at the rate of Rs.4500/- per month. (Rs.4500 x 3 months = Rs.13,500/-). The same appears to be justified.

21. Likewise, the Tribunal awarded Rs.5,000/- towards Extra Nourishment and Rs.5,000/- towards Transportation. Considering the medical bills produced under Ex.P.8, the sum of Rs.4,34,300/- is provided. Thus considering the attendant circumstances and the evidence available on record, the Tribunal

has correctly assessed the disability and fixed contributory negligence and even otherwise, for the reasons stated above, the contributory negligence of the Petitioner is to be fixed at 25% and as such, the award amount passed by the Tribunal at Rs.5,78,800/- and out of it, 75% of the compensation payable to the injured claimant at Rs.4,34,100/- is just and proper.

22. For the reasons stated above, there is no need for enhancement of the award amount as sought by the Cross Objector/claimant and on the other hand, this court is also not inclined to reduce the award amount as sought by the Transport Corporation. As such, the plea raised by both sides is not entertained by this Court. Accordingly, CMA.No.2840 of 2012 filed by the Transport Corporation and the Cross Objection No.123 of 2014 filed by the Claimant are dismissed. The award passed by the Tribunal in MCOP.No.4032 of 2009 is confirmed. This court, in M.P.No.1 of 2012 in CMA.No.2840/2012, by order dated 29.10.2012, directed the Transport Corporation to deposit the entire award amount with accrued interest. Further, by order dated 24.02.2014 passed in M.P.No.1 of 2014 in CMA.No.2840 of 2012, the Petitioner/claimant was permitted to withdraw 50% of the amount deposited by the Transport Corporation, with accrued interest. Therefore, the Petitioner/claimant/Cross Objector is permitted to withdraw the balance amount, with accrued interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar(CCC)

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Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.

+1cc to Mrs.R.Manoranjitham, Advocate SR.NO.42896

GP(CO)

sm:15.11.2018

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C.M.A.No.2840 of 2012
and Cross Objection No.123 of 2014