

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.07.2018

Coram

THE HONOURABLE MR. JUSTICE S.BASKARAN

Civil Miscellaneous Appeal No.349 of 2008
and
Civil Miscellaneous Appeal No.3473 of 2009

C.M.A.No.349 of 2008

Tamil Nadu State Transport
Corporation Ltd.,
Rep. by its Managing Director,
Rangapuram, Vellore. Appellant/Respondent

...vs...

B.Vetrivelan Respondent/Petitioner

C.M.A.No.3473 of 2009

B.Vetrivelan Appellant/Petitioner

...vs...

Tamil Nadu State Transport
Corporation Ltd.,
Rep. by its Managing Director,
Rangapuram, Vellore. Respondent/Respondent

This Civil Miscellaneous Appeal has filed under
Section 173 of Motor Vehicles Act, 1988, against the Order
and Decretal Order dated 01.12.2006 made in MCOP.No.89 of
2003 on the file of the Motor Accident Claims Tribunal/Sub
Court, Arni.

For Appellant: Mr.V.Ramesh
CMA.No.349 of 2008 and
respondent in CMA No.3473 of 2009)
Respondent : Mr.P.Seshadri
(in CMA.No.349 of 2008 and
appellant in CMA No.3473 of 2008)

COMMON JUDGMENT

Aggrieved over the findings of the Tribunal, dated
01.12.2006 made in MCOP.No.89 of 2003 on the file of the

Motor Accident Claims Tribunal/Sub Court, Arni, the present appeal in CMA.No.349 of 2008 has been filed by the respondent Transport Corporation to set aside the award passed by the Tribunal, while not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant filed CMA.No.3473 of 2009 for enhancing the award amount.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioner is that on 23.12.2002 at about 1.30 p.m., while the petitioner was proceeding in the respondent Transport Corporation bus bearing Registration No.TN-23-N-0931, from Vellore to Arni, while the bus was going near Kaniyambadi Kannikovil, another respondent bus bearing Registration No.TN-23-N-1482 came in the opposite direction at high speed dashed against the bus in which the petitioner was proceeding causing him multiple grievous injuries. The accident occurred due to the negligence of both the bus drivers. The petitioner was aged 19 years and by carrying on fruit vending business was earning a sum of Rs.5,000/- per month. Due to the injuries suffered, the petitioner is unable to do his normal work resulting in loss of income. Thus, the petitioner sought for a sum of Rs.1,30,000/- as compensation from the respondent.

4.On the other hand, opposing the claim petition, the respondent Transport Corporation by filing counter contends that the accident does not occur in the manner alleged by the petitioner. On 23.12.2002, the respondent bus bearing Registration No.TN-23-N-1482 was proceeding from Thiruvannamalai to Vellore and while going near Kaniyampadi Kannikovil, a Tata Sumo Car over took the bus and on seeing that the respondent bus driver slowed down the bus, but the Tata Sumo Car after overtaking the respondent bus suddenly stopped in the middle of the road without any warning and to avoid dashing on the said car, the respondent bus driver turned the bus to right side and at that time dashed against another respondent bus bearing Registration No.TN-23-N-0931 which was coming in the opposite direction. As such, the respondent bus drivers are not responsible for the accident. The claim of the petitioner about the age, occupation, monthly income of the petitioner and the nature of injuries suffered as alleged in the petition is denied. The amount claimed by the petitioner is highly excessive. Thus, the respondent Transport Corporation sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1, the medical expert as P.W.2 and produced documents Ex.P1 to Ex.P8 to prove his claim. On the side of the respondents, R.W.1 was examined, but no document was produced.

6. The Tribunal, on the basis of materials available on record, found the negligence of the respondent bus driver alone caused the accident, passed an award for a sum of Rs.60,170/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the respondent Transport Corporation has come forward with this appeal in CMA.No.349 of 2008, while being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/ claimant filed the appeal in CMA.No.3473 of 2009.

7. Heard the learned counsel appearing for the appellant-Transport Corporation and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant-Transport Corporation contends that the Tribunal wrongly concluded that the negligence of the respondent bus driver alone caused the accident. The Tribunal ought to have rejected the evidence of P.W.1 in all aspects. The Tribunal failed to consider the fact that no eye witness or any police officials were examined to prove the negligence on the part of the respondent bus driver was the cause for the accident. The Tribunal erred in relying upon the petitioner/claimant documents which were marked without examining the author of documents. The amount awarded by the Tribunal under different heads are highly excessive. The interest awarded by the Tribunal at the rate of 9% is on the higher side. Thus, the Appellant Transport Corporation sought for setting aside the award passed by the Tribunal by entertaining the appeal filed by them.

9. Per contra, the learned counsel appearing for the petitioner/claimant/respondent contends that the Tribunal ought to have awarded the entire claim of Rs.1,30,000/- instead of awarding Rs.60,170/-. The amount awarded under different heads is very nominal. The petitioner having suffered permanent disability, the Tribunal ought to have awarded higher compensation towards loss of earning capacity. Thus, the petitioner/claimant sought for enhancement of the Award amount by entertaining the appeal filed by him

10. It is only quantum appeal. The fact that the

petitioner travelled in the respondent Transport Corporation bus and the said bus dashed against another bus of the respondent corporation, resulting in the petitioner suffering multiple grievous injuries is not disputed. The petitioner who deposed as P.W.1 clearly stated that on 23.12.2002, while he travelled in the respondent Transport Corporation bus bearing Registration No.TN-23-N-0931, the said bus dashed against another respondent bus bearing Registration No.TN-23-N-1482, which was coming in the opposite direction resulting in the petitioner suffering multiple grievous injuries. P.W.1 further stated that the negligence of the respondent bus driver which was coming in the opposite direction alone caused the accident. The police registered Ex.P1 First Information Report against the driver of the respondent bus bearing Registration No.TN-23-N-1482 only. The contents of Ex.P1 First Information report corroborates the version of the accident given by P.W.1.

11.On the other hand, the respondent bus driver who deposed as R.W.1 stated that while he was proceeding from Vellore to Reddypalayam, near Kaniyampadi Kannikovil as the conductor give whistle to stop the bus, he stopped the bus. At that time, in the opposite direction one Tata Sumo Car came at high speed and as the driver of the Tata Sumo Car suddenly applied brake and stopped the care, the respondent Transport Corporation bus which was coming in the opposite direction dashed against the bus driven by R.W.1 resulting in the accident. R.W.1 further stated that the negligence of the driver of the Tata Sumo Car alone caused the accident. However, no complaint was lodged against the driver of the Tata Sumo Car. On the other hand, in Ex.P1 FIR it is clearly stated that only due to the negligence of the driver of the respondent Transport Corporation bus bearing Registration No.TN-23-N-1482 alone, the accident occurred.

12.Even though, R.W.1 the driver has denied the accident and assuming that he has stopped the bus before the car dashed against the bus, the police would not have lodged a false complaint against him. Further, there is no explanation by the R.W.1 as to why Ex.P1 First Information Report was registered against him falsely as claimed by him. Assuming that the driver of the Tata Sumo Car is responsible for the accident, the driver of the respondent corporation bus driver would have lodged complaint against the car driver, but he has not done so. As stated above, it is clear from the evidence of P.W.1 as well as the contents of Ex.P1 First Information Report, which clearly puts blame on the respondent bus driver by alleging that negligence of the driver of the respondent bus bearing

Registration No.TN-23-1482 alone caused the accident. Thus, the Tribunal, on the basis of the above said evidence, correctly concluded that the respondent bus driver negligence alone caused for the accident.

13.The petitioner has stated that he suffered two grievous injuries as well as one simple injury. To prove the same, the petitioner has produced Ex.P2 wound certificate. P.W.1 also stated that in the accident he suffered injuries in the right leg and all over the body. His spinal cord was slightly affected, for which he took treatment in Vellore Government Hospital for 10 days as inpatient and thereafter took treatment in a private hospital. He also took treatment in CMC Vellore and but he has not recovered completely till now. The petitioner is finding it difficulty in sitting down on the ground. The fractured bone has mal united and due to that the petitioner states that his earning capacity is affected.

14.P.W.2, the Doctor who examined the petitioner physically and also took Ex.P8 series X-rays stated that the movement of the right leg angle of the petitioner is affected and the disability caused due to the injuries is 30%. P.W.2 also stated that as per Ex.P8 X-rays, it is visible that the fractured bones have mal united and the disability for the same is found at 10%. The disability certificate issued by P.W.2 Doctor is produced as Ex.P7. Thus, the petitioner contends that he suffered permanent disability and sought for compensation for the same. There is no contra evidence let in by the respondent regarding the nature of injuries suffered by the petitioner as well as the partial permanent disability caused by the said injuries. As such, the Tribunal is justified in accepting P.W.2 estimation and fixing the disability suffered by the petitioner at 40%. The accident has occurred during 2002. However, considering the fact that the petitioner is a vegetable vendor and necessarily he would have to move around to carry on his business. As such, if the right leg angle is affected, he will find difficulty in moving around to carry on vegetable vending business. In such circumstances, as the petitioner being aged 19 years only, it will be appropriate to provide for the disability suffered by him at the rate of Rs.2000/- per percentage. Thus, for 40% disability, the compensation will be $\text{Rs.2,000/-} \times 40\% = \text{Rs.80,000/-}$. The petitioner has undergone treatment as inpatient and also underwent surgical treatment. As such it will be appropriate to provide for Rs.10,000/- towards pain and sufferings. Further, a sum of Rs.5,000/- towards extra-nourishment and Rs.5,000/- is provide towards Transpiration charges. Further, the petitioner produced Ex.P3 and Ex.P5 medical

bills and prescriptions. It is clear from the same, that the petitioner has incurred medical expenses. Thus, a sum of Rs.7,000/- is provided for medical expenses. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Grievous Injury	7,000.00	-
2.	Permanent Disability	40,000.00	80,000.00
3.	Pain and sufferings	3,000.00	10,000.00
4.	Medical Bills	6,270.00	7,000.00
5.	Extra nourishment	2,000.00	5,000.00
6.	Transportation & Xray	1,900.00	5,000.00
	Total	60,170.00	1,07,000.00

Accordingly, a sum of Rs.60,170/- awarded by the Tribunal is modified and the same is enhanced to Rs.1,07,000/-.

15.C.M.A.No.349 of 2008

In the result, the civil miscellaneous appeal is dismissed. No Costs.

16.C.M.A.No.3473 of 2009

In the result, The Civil Miscellaneous is allowed. No costs. The amount of Rs.60,170/- awarded by the Tribunal, dated 01.12.2006 made in MCOP.No.89 of 2003 on the file of the Motor Accident Claims Tribunal/Sub Court, Arni, is hereby enhanced to Rs.1,07,000/-. The appellant Transport Corporation is directed to deposit the entire Award amount of Rs.1,07,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit of the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

rrg

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge
Motor Accident Claim Tribunal,
Arni.

+1 CC TO MR.P.SATHEESH KUMAR Advocate SR.NO. 43338

C.M.A.No.349 of 2008
and

C.M.A.No.3473 of 2009

SJ (CO)
ASK(11/08/2018)



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