

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.331 of 2012
and
MP.No.1 of 2012

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Ltd.,
Kanchipuram Division,
No.1, Sheikpet Nadu Street,
Vedhachalam Maliagai,
Kancheepuram.

... Appellant/Respondent

...vs...

S.Jayanthi @ Vaijayanthi
Respondent/Petitioner

...

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.11.2010 made in MCOP.No.955 of 2007 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai.

For Appellant : Mr.S.S.Swaminathan

For Respondent : Mr.P.Natarajan

JUDGMENT

Aggrieved over the finding of the Tribunal, dated 19.11.2010 made in MCOP.No.955 of 2007 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai, the respondent Transport Corporation filed this present appeal for enhancement of 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 22.03.2006 at about 13.00 hours, while the petitioner was trying to get down from the respondent Corporation bus bearing Registration No.TN-27-N-0885, at Jothipuram Bus Stop in Sholinghur to Arrakonam Road, at that time the driver of the bus without seeing the petitioner getting down from the bus, moved the bus, as a result of which, the petitioner was thrown out of the bus and suffered serious head injuries as well as various injuries all over the body. The petitioner was aged about 36 years and working as coolie in construction work was earning a sum of Rs.3,000/- per month. Due to the fall from the bus, she suffered Head injuries, Concussion Brain, with Right Temporal Fissure Fracture and Multiple injuries all over the body. The petitioner claims due to such kind of injuries she is unable to do cooli work in construction industry resulting in loss of income to her. Thus, the petitioners seeks a sum of Rs.3,00,000/- as compensation from the respondent Transport Corporation.

4. On the other hand, opposing the claim petition, the respondent Transport Corporation filed counter denying the claim of the petitioner about the accident. The respondent Transport Corporation disputes and denies that the negligence of the bus driver alone caused the accident. Even before the bus came to halt at the bus stop, the petitioner tried to get down from the bus resulting in fall from the moving bus. The petitioner was taken to the hospital and after the first aid treatment, he was discharged from the hospital. The petitioner did not suffer any major injury. The accident occurred only due to the negligence of the petitioner, who tried to get down from the moving bus. Hence, the respondent Transport Corporation is not liable to pay any compensation to the petitioner. As such, the respondent seeks dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined herself as P.W.1 and medical expert were examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P14 to substantiate her claim. On the side of the respondent, the driver of the offending bus deposed as R.W.1, but no document was produced.

6. The Tribunal, after considering the materials available on record, found the negligence of respondent bus driver alone caused the accident and awarded a sum of Rs.1,71,000/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the respondent Transport Corporation filed this present appeal.

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

record.

8. The learned counsel appearing for the respondent Transport Corporation contends that fixing the negligence on the part of the respondent bus driver for the accident is not warranted. The percentage of disability should not have been fixed at 60% as the same is on the higher side. The Tribunal ought to have awarded a sum of Rs.1,000/- or Rs.1,500/- only per percentage of permanent disability. The amount awarded by the Tribunal under the different heads is on the higher side. Hence, the respondent Transport Corporation seeks to entertain the appeal and to set aside the award passed by the Tribunal.

9. Per contra, the learned counsel appearing for the petitioner/claimants contends that the petitioner after suffering injuries, is not able to attend to her work regularly and she is taking treatment till now. The petitioner has suffered loss of income and also piece of mind and good health. As such, the petitioner prays that the respondent Transport Corporation is not entitled to seek any deduction in the award passed by the Tribunal. Thus, the petitioner/claimant seeks dismissal of the present appeal.

10. The petitioner who deposed as P.W.1 clearly stated the manner in which the accident took place. According to P.W.1, only due to the rash and negligent driving of the respondent Transport Corporation bus, the accident took place. Admittedly, the police registered Ex.P1 first information report against the respondent bus driver and after investigation laid charge sheet Ex.P4 against the said driver only.

11. On the other hand, the driver of the respondent bus, who deposed as R.W.1 stated that while he was on duty in the bus bearing Registration No.TN-27-N-0885, he was proceeding in his regular trip from Sholinghur to Arakkonam at about 1.30 p.m., in Jothipuram bus stop, one of the passenger got injured while she tried to get down from the moving bus. The driver of the respondent who deposed as R.W.1 was naturally be interested in safeguarding himself. As such, in the absence of any corroborative materials to support the evidence of R.W.1's claim about the nature of accident, his evidence cannot be relied upon. As stated above, the police have registered FIR and also filed final report against the driver of the bus who is R.W.1, alleging his negligent driving of the bus alone caused the accident. In such circumstances, the Tribunal is just and right in concluding that the negligence on the part of the respondent Transport Corporation driver alone caused the accident.

12. The petitioner, who deposed as P.W.1 stated that in the accident, she sustained head injury, Concussion Brain, with Right Temporal Fissure Fracture and Multiple injuries all over

the body. The petitioner produced Ex.P5 discharge summary issued by the Government Hospital, Chennai. The injuries mentioned in Ex.P5 is confirmed by the medical experts who deposed as P.W.2 and P.W.3. As such, it is clear from the evidence of P.W.1 to P.W.3 that the injured petitioner suffered fracture and grievous injuries. To support her claim, the petitioner produced Ex.P8 to Ex.P10 medical records given by the Government General Hospital, Chennai. As per Ex.P5 discharge summary, the petitioner suffered concussion brain with right temporal fissure and she was treated as in patient from 23.08.2006 to 29.03.2006. The petitioner, to prove that she suffered physical disability, examined two doctors as P.W.2 and P.W.3. Both Doctors stated that they physically assessed the disability suffered by the petitioner, and as per the assessment of P.W.2 and P.W.3 Doctors, the permanent disability suffered by the petitioner is find at 30% and 40% respectively.

13. Thus, pointing it out, the learned counsel appearing for the petitioner contends that put together the total disability assessment of the petitioner is 70%, but the Tribunal erred in fixing the disability at 60%. The Tribunal, after considering the medical evidence and other attendant circumstances, fixed the compensation of Rs.2,000/- per percentage. Taking into consideration the over all fracture, this Court is of the view that the disability can be fixed at 50% and a sum of Rs.2,000/- be awarded per percentage. As the permanent disability compensation is calculated as follows. 50% x Rs.2,000/- = Rs.1,00,000/-. Further, the amount awarded by the Tribunal under the different heads is as follows:-

1. Loss of income	- Rs.	18,000.00
2. Transportation	- Rs.	3,000.00
3. Extra nourishment	- Rs.	5,000.00
4. Pain and sufferings	- Rs.	25,000.00
5. Disability	- Rs.	1,20,000.00

Total - Rs. 1,71,000.00

14. Taking in to consideration, the amount awarded under various heads apart from the disability is confirmed. Thus, the amount awarded is as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent Disability	1,20,000.00	1,00,000.00
2.	Pain and sufferings	25,000.00	25,000.00
3.	Extra nourishment	5,000.00	5,000.00
4.	Transport to Hospital	3,000.00	3,000.00

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
5.	Loss of income during treatment period	18,000.00	18,000.00
	Total	1,71,000.00	1,51,000.00

15. In the result, this appeal is partly allowed without costs. The sum of Rs.1,71,000/- awarded by the Tribunal dated 19.11.2010 made in MCOP.No.955 of 2007 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai is hereby reduced to Rs.1,51,000/-. The respondent Transport Corporation is directed to deposit the entire modified award amount of Rs.1,51,000/- with interest at the rate of 7.5% p.a. from the date of filing the petition till the date of depositing the award amount and 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 award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CCC)
//True Copy//
Sub Assistant Registrar

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To
The VI Judge,
Small Causes Court,
The Motor Accident Claims Tribunal
Chennai.

copy to
The Section Officer
VR Section
High Court Madras

+1 cc to Mr.S.S.Swaminathan Advocate sr 16510
+1 cc to Mr.P.Natarajan Advocate sr 16533

C.M.A.No.331 of 2012

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