

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2018
Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2711 of 2004

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Bharathipuram, Salem Main Road
Dharmapuri. ... Appellant/Respondent

...vs...

Muniraj ... Respondent/Petitioner

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 31.07.2003 made in MCOP.No.95 of 2003 on the file of the Motor Accident Claims Tribunal/(1st Additional District Judge), Dharmapuri at Krishnagiri.

For Appellant : Mr.D.Venkatachalam
For Respondent : Mr.G.M.Ananthakumar

JUDGMENT

Aggrieved over the finding of the Tribunal, dated 31.07.2003 made in MCOP.No.95 of 2003 on the file of the Motor Accident Claims Tribunal/(1st Additional District Judge), Dharmapuri at Krishnagiri, the respondent Transport Corporation filed this present appeal for setting aside the award passed by the Tribunal.

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 14.08.2002 at about 8.05 hours, while the petitioner was going as pillion rider in the bicycle along with his friend in Hosur to Adhiyamankottai road, near Uddanapalli Government High School, the respondent bus bearing Registration No.TN-29-N-0565 came from behind at high speed and dashed on the bicycle and in the impact, the petitioner and the rider fell down and suffered multiple

grievous injuries. The accident occurred only due to the negligence of the respondent bus driver only. The petitioner who was aged about 19 years by doing agriculture work as well as milk vending business was earning a sum of Rs.3,000/- per month. As the petitioner suffered multiple grievous injuries all over the body, he is unable to attend to his normal avocation, resulting in loss of income to him. Thus, the petitioner sought for a sum of Rs.2,00,000/- 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. The respondent Transport Corporation bus bearing Registration No. TN-29-N-0565 was proceeding at normal speed and at that time, the petitioner and his friend Somasekar without noticing the on coming bus suddenly crossed the road and only due to their carelessness the accident occurred. The respondent bus was not responsible for the accident. The claim of the petitioner about his age, avocation and income is not true. The claim of the petitioner is exorbitant. Thus, the respondent-Transport Corporation sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P3 to prove his claim. On the side of the respondent, neither oral nor documentary evidence let in.

6. The Tribunal, on the basis of materials available on record, found the negligence of the respondent Transport Corporation bus driver alone caused the accident, passed an award for a sum of Rs.1,49,900/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the respondent-Transport Corporation has come forward with this present appeal.

7. Heard the learned counsel appearing for the respondent-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 fixed the monthly income of the petitioner at Rs.2,000/- and applied multiplier 17 without any basis. The amount provided for future medical expenses is unwarranted. The amount awarded by the Tribunal under different heads is on the higher side. The claim of the respondent about the manner of the accident was true, but the same was not accepted by the Tribunal. Thus, the respondent sought for setting aside the award passed by the Tribunal by

entertaining the appeal.

9. Per contra, the learned counsel appearing for the respondent/claimant contended that the Tribunal has correctly assessed the negligence aspect and found the respondent bus driver alone caused the accident. Likewise, the Tribunal on the available evidence passed just and fair compensation and the same needs no interference. Thus, the petitioner/claimant sought for dismissal of this appeal.

10. Before this Court, both parties contested only about the quantum of award and they did not dispute the conclusion of the Tribunal regarding the negligence aspect. The petitioner who deposed as P.W.1 clearly stated about the manner in which the accident occurred. The police have registered Ex.P1 First Information Report against the respondent driver only. It is clear from the contents of Ex.P1 First Information Report and the oral evidence of P.W.1 that the respondent bus driver drove the bus at high speed and dashed against the bicycle in which the petitioner was travelling as pillion rider. On the other hand, no evidence was let in by the respondent, as even the driver of the respondent bus was not examined. As such, it is apparent from the evidence of P.W.1 and the contents of Ex.P1 First Information Report that the negligence on the part of the respondent bus driver alone resulted in the accident. The conclusion of the Tribunal in that regard is just and proper.

11. The petitioner stated that he was aged about 19 years and by carrying agriculture work and milk vending business was earning a sum of Rs.3,000/- per month. The petitioner also stated that he suffered multiple grievous injuries as stated earlier. The wound certificate produced as Ex.P2 clearly mentioned about the injuries suffered by the petitioner. As the petitioner lost two teeth, he find it difficult to eat any thing. His face was disfigured. As such the petitioner states that he is suffering from headache also. The Doctor, who deposed as P.W.2 issued Ex.P3 disability certificate and stated that the disability suffered by the petitioner is 60%. It is clear from the evidence of P.W.2 that the petitioner will find difficulty in chewing hard substance and he has lost the sense of taste. As such, the Tribunal found that the evidence of P.W.2 and based on physical examination of the petitioner and concluded that 60% disability given by him is to be accepted. Admittedly, no contra evidence is let in by the respondent to disprove the evidence of P.W.2 Doctor. Therefore, the Tribunal is justified in fixing the disability at 60% on the basis of P.W.2 Doctor evidence and Ex.P3 disability certificate.

12. As the petitioner was aged 19 years, the multiplier applied to be is 16. The petitioner claims that he was earning a sum of Rs.3,000/- per month. In the absence of any proof for

the same, the Tribunal fixed the notional income at Rs.2,000/- per month by considering 60% disability, and adopting multiplier 16 arrived at a sum of Rs.1,34,400/- towards loss of earning capacity. The Tribunal also awarded the amounts towards nutritious food, future medical expenses as well as pain and sufferings. In view of the above discussions, it is clear that the award passed by the Tribunal appears to be reasonable based on proper appreciation of evidence on record. Therefore, there is no need to interfere with the same. The respondent has not established any infirmity or error in the conclusion arrived at by the Tribunal. As such, no ground is made out to interfere with the conclusion of the Tribunal and the appeal has to fail and the same is answered accordingly.

13. In the result, this appeal is dismissed. No costs. The award passed by the Tribunal dated 31.07.2003 made in MCOP.No.95 of 2003 on the file of the Motor Accident Claims Tribunal/(1st Additional District Judge), Dharmapuri at Krishnagiri, is hereby confirmed. The appellant Transport Corporation is directed to deposit the entire Award amount of Rs.1,49,900/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit 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.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rrg
To

The Ist Additional Judge,
Dharmapuri at Krishnagiri.

Copy To: The Section Officer,
VR Section, High Court, Madras.

SVI (CO)
sm:2.7.2018

C.M.A.No.2711 of 2004