

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3070 of 2018

Metropolitan Transport Corporation Ltd.,
represented by its Managing Director,
Formerly known as Pallavan Transport Corporation,
Chennai-2. ..Appellant/Respondent

Vs.

Shailaja Srinivasan ..Respondent/Petitioner

(Cause title accepted vide Court dated
02.12.2004 made in C.M.P.No.19213/2004)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of
Motor Vehicles Act, against the judgment and decree dated
03.04.2002 made in M.C.O.P.No.2441 of 1998 on the file of the
Chief Judge, Small Causes Court, (Motor Accident Claims
Tribunal), Madras.

For Appellant : M/s.S.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging both the
quantum as well as the liability fastened on them by the award
dated 03.04.2002 made in M.C.O.P.No.2441 of 1998 on the file of
the Chief Judge, Small Causes Court, (Motor Accident Claims
Tribunal), Madras.

2.The appellant is the respondent in M.C.O.P.No.2441 of 1998
on the file of the Chief Judge, Small Causes Court, (Motor
Accident Claims Tribunal), Madras. The respondent/claimant filed
the said claim petition, claiming a sum of Rs.8,00,000/- as
compensation for the injuries suffered by her in the accident
that took place on 02.09.1997.

3.According to the respondent, on 02.09.1997, while she was
travelling as a pillion rider in a scooter bearing Registration

No.TSL-7452, proceeding from Egmore to Mount Road, near Gemini fly over, a bus bearing Registration No.TML 2000, belonging to the appellant-Transport Corporation, driven by its driver in a rash and negligent manner, dashed against the backside of the scooter. As a result of which, the respondent sustained grievous injuries and the rider of the scooter died on the spot. The accident had occurred only due to the rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation.

4.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondent. According to the appellant-Transport Corporation, when the driver of the bus involved in the accident was taking a turn from Mahatma Gandhi Road to Anna Salai, observing traffic rules, a scooter in which the respondent was a pillion rider, driven in a rash and negligent manner, lost balance and hit the left side of the bus. As a result of which, the respondent as well as the rider of the scooter fell down and sustained injuries. The accident occurred solely due to the negligent driving by the rider of the scooter and the driver of the bus belonging to the appellant-Transport Corporation is not responsible for the said accident. Unless it is proved that the accident occurred due to the driver of the bus belonging to the appellant-Transport Corporation, the respondent is not liable to claim compensation under Section 140 of the Motor Vehicle Act and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined herself as P.W.2 and two Doctors were examined as P.W.4 and P.W.5 and 30 documents were marked as Exs.P1 to P30. On behalf of the appellant-Transport Corporation, the driver of the bus was examined as R.W.1 and one document was marked as Ex.R1.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred solely due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation and awarded a sum of Rs.2,30,000/- as compensation to the respondent and directed the appellant-Transport Corporation to pay the same.

7.Challenging both the quantum as well as the liability fastened on them by the said award passed by the Tribunal dated 03.04.2002 made in M.C.O.P.No.2441 of 1998, the appellant-Transport Corporation has filed the present Civil Miscellaneous Appeal.

8.The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal erred in holding on mere surmises and conjunctures, without properly appreciating the

evidence on record, that the accident solely occurred due to the rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation. The Tribunal ought to have considered the fact that had the bus driven in a rash and negligent manner and dashed against the scooter from back, the respondent would have sustained severe injuries. The Tribunal failed to take into consideration that no damage was caused to the scooter in which the respondent was travelling. The Investigation Officer was not examined by the respondent to prove the manner of the accident. The Tribunal without properly appreciating the evidence on record, awarded the amounts which are on the higher side. Therefore, prayed for setting aside the award passed by the Tribunal.

9.I have heard the learned counsel appearing for the appellant and perused all the materials available on record.

10.The claimant/respondent as P.W.2 has deposed the manner in which the accident had occurred. On a perusal of Ex.P3, the complaint, it is seen that the bus which was driven in a rash and negligent manner hit the scooter from behind and caused the accident. Rough sketch which shows the scene of occurrence is marked as Ex.P14. P.W.3, Sub-Inspector of Police has deposed that after due investigation, charge sheet has been filed against the driver of the bus belonging to the appellant-Transport Corporation. The driver of the bus as R.W.1 has categorically stated that he has not seen the scooter while proceeding from the signal. R.W.1 has marked the Investigation report as Ex.R1, which is a self serving document prepared by the appellant-Transport corporation. On the basis of the evidence on record and the documents filed in support of the same, the Tribunal has held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation. I do not find any error in the said finding of the Tribunal warranting interference by this Court.

11.As far as the quantum of compensation is concerned, the respondent/claimant has taken treatment in the hospital as inpatient from 02.09.1997 to 15.09.1997, 30.09.1997 to 27.10.1997 and 18.01.2000 to 24.01.2000 and the same is evident through the discharge summaries marked as Exs.P9 to P11. The respondent has marked the medical bills as Ex.P12. Taking into consideration, the nature of injuries and the treatment taken by the respondent, the Tribunal has granted a sum of Rs.1,10,000/- under the head of medical expenses, transport charges and extra nourishment. P.W.4/Doctor and P.W.5/Doctor have deposed that the respondent sustained fractures and the bones are malunited. To support the said contention, the respondent has marked Exs.P20 to P22. Hence, a sum of Rs.30,000/- is granted towards pain and

suffering. The Tribunal considering the assessment of disability by P.W.4/Doctor as 70% and P.W.5/Doctor as 50%, granted a sum of Rs.70,000/- towards disability. The Tribunal considering the aspect that the respondent is a classical dancer and she suffered disability due to the accident, awarded a sum of Rs.70,000/- towards loss of earning power. The Tribunal after considering both oral and documentary evidence, awarded a total sum of Rs.2,80,000/- as compensation to the respondent/claimant. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

12. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent is permitted to withdraw the award amount with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs.

gsa

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Chief Judge,
Small Causes Court,
(Motor Accident Claims Tribunal), Madras.

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C.M.A.No.3070 of 2018

Rk(CO)
Kak(01/04/2019)