

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2019

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Civil Miscellaneous Appeal No.2110 of 2008 and
M.P.No.1 of 2008

The Managing Director
Tamilnadu State Transport Corporation
Coimbatore Division No.I
No.37, Mettupalayam Salai
Coimbatore ... Appellant /Respondent

Vs

Shajahan ... Respondent/Claimant

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 01.06.2006 passed by the Motor Accidents Claims Tribunal, Subordinate Court, Sankari in MCOP No.174 of 2004.

For Appellant : Mr.N.Anand

J U D G M E N T

The case in brief, is as follows:

On 04.09.2004 at about 8.00 p.m., the respondent / claimant was proceeding in his bicycle on the Salem Main Road, towards his workshop situated at Bhavani Main Road. At that time, the bus belonging to the appellant Transport Corporation bearing Reg.No. TN 33 N 1615, came in a rash and negligent manner and hit the claimant, due to which, he sustained multiple injuries all over the body. The claimant filed a claim petition before the Tribunal and the Tribunal based on the materials available on record, has awarded a sum of Rs.1,96,000/- with interest at the rate of 7.5% per annum from the date of petition, as total compensation.

2.Challenging the same, the Transport Corporation has come up with this appeal.

3.The learned counsel for the appellant Transport Corporation has submitted that the Tribunal has failed to consider the specific plea of the Transport Corporation that

only when the injured was crossing the road without following the traffic rules, the accident had occurred and hence the Tribunal ought to have fixed contributory negligence at least to some extent on the part of the injured claimant. The learned counsel further submitted that the Tribunal has erroneously taken the disability of the claimant at 26%. It is further submitted that the award passed by the Tribunal under the various heads are excessive and exorbitant.

4. Heard the learned counsel for the appellant and perused the materials and evidence available on record, carefully and meticulously.

5. Though a conditional order of interim stay was granted and notice was ordered on 17.07.2008, the appellant has not taken proper steps to serve papers on the other side, even at this length of time. However, due to paucity of time, this appeal is taken up for final disposal on merits.

6. P.W.1-claimant, deposed before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the bus and the same has been reiterated by P.W.2. The evidence of P.Ws.1 and 2, corroborated with the contents of the First Information Report. Moreover, it is seen that a criminal case has been initiated against the driver of the bus. only. Though it is stated on the side of the appellant Transport Corporation that without following the traffic rules, the injured claimant attempted to cross the road and due to which the accident occurred, to substantiate the same, no oral or documentary proof has been adduced on their side. Hence, the Tribunal has concluded that the accident had occurred only due to the rash and negligent driving of the driver of the Transport Corporation bus, which in the opinion of this Court is perfectly justified.

7. As far as the quantum of compensation, the Tribunal has taken into consideration Ex.P.2 Wound Certificate, which reveals that the injured claimant sustained the following injuries:-

- Lacerated injuries over occipital region 3x1cm
- Contusion over right side eye
- Laceration over left hand 3x2cm
- Contusion right shoulder 4x4cm
- Diffuse contusion right side chest
- Right shoulder fracture scapula right and fracture in ribs 1 to 5

8. Further, the Tribunal has taken note of the evidence of PW 3 Doctor, who has issued Disability Certificate fixing the disability of the claimant at 26%. and awarded a sum of Rs.26,000/- towards disability. Further, a sum of Rs.1,000/- has

been awarded towards Transport expenses and a sum of Rs.50,000/- has been awarded towards Medical expenses based on Ex.P.4 to Ex.P.15 Medical bills. Though the injured claimant stated in his affidavit as well as in his evidence that he was running "Basha Auto Electrical Works" and earning a sum of Rs.6,000/-, in the absence of any documentary proof thereof, the Tribunal has fixed taken his monthly income at Rs.1,000/- and awarded a sum of Rs.1,20,000/- towards loss of income, on the presumption that he would be able to work as before, only after a period of 10 years. The Tribunal has correctly considered the materials and evidence, adopted the correct multiplier and arrived at the compensation towards loss of income. The amounts awarded towards other heads are also just and very reasonable and hence the same are confirmed.

9. Even though the total compensation works out to Rs.1,97,000/- it is stated as Rs.1,96,000/- in the judgment of the Tribunal, which is a clerical error. Hence, the claimant is entitled to the compensation of Rs.1,97,000/- with interest at the rate of 7.5% per annum from the date of petition.

10. The Civil Miscellaneous Appeal is disposed of accordingly. No costs. The appellant / Transport Corporation is directed to deposit a sum of Rs.1,97,000/- with interest at the rate of 7.5% per annum from the date of petition, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondent/ claimant is permitted to withdraw the same on making proper application before the Tribunal. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal/ Subordinate Court,
Sankari.

+1cc to Mr.N.Anand, Advocate Sr.69890

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srg 23/11/2020