

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1379 of 2011

Vengatesan

... Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu Government Transport Corp.,
Villupuram.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 17.11.2008, in M.C.O.P.No. 504 of 2005 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Gingee.

For Appellant : Mr.T.Dhanya kumar

For Respondent : Mr.S.V.Vasanth kumar

JUDGMENT

The appellant is the claimant in M.C.O.P.No.504 of 2005, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Gingee. He has filed the above claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 28.04.2004.

2. The brief case of the appellant/claimant is as follows:

On 28.04.2004, at about 08.15 am, the appellant/claimant travelled as a pillion rider in a motorcycle ridden by one Jothimurugan from Gingee to Tindivanam. While they were nearing the salai village, a bus bearing Registration No. TN 32 N 1623, belonging to the Tamil Nadu State Transport Corporation, hit the motorcycle in which the appellant/claimant was travelling, as a result of which, he fell down and sustained grievous injuries. According to the appellant/claimant, the rash and negligent driving of the driver of the said bus was the cause of the accident, and that, since, the said bus belonged to the Tamil Nadu State Transport Corporation, they are liable to pay compensation of Rs.10,00,000/- to him.

3. The learned Tribunal, after analysing the evidence on record, held that the claimant is entitled for compensation of Rs.1,12,000/-. However, since, there is contributory negligence, on the part of the claimant, the Tribunal deducted 25% from the total amount and accordingly, awarded compensation of Rs.84,000/- together with interest at the rate of 8% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellant/claimant would contend that the Tribunal has fixed the contributory negligence in the ratio of 75:25 between the driver of the said bus and the rider of the motorcycle and the same is erroneous. He would also contend that the disability arrived by the Tribunal is very low. He would further contend that the Tribunal without considering the various injuries sustained by the claimant, awarded a very meagre compensation.

5. Per contra, the learned counsel appearing Transport Corporation would contend that the accident has taken place in the road bend and without noticing, the bus being taking a turn, the rider of the motorcycle continued to drive his vehicle and therefore, he is also responsible for the said accident. Hence, he stated that the contributory negligence fixed by the Tribunal is correct and also made submissions in support of the award passed by the Tribunal.

6. Heard both the parties and perused the documentary and oral evidence adduced before the Tribunal.

7. Taking note of the evidence of Jothimurugan (PW1), Partheeban (RW1) and FIR copy (ex.p1) and also the fact that the accident has taken in a road bend, the Tribunal appears to have come to the right conclusion that both the driver of the bus as well as the rider of the motorcycle are responsible for the accident. Therefore, the contributory negligence fixed by the Tribunal in the ratio 75:25 between the driver of the said bus and the rider of the motorcycle is perfectly in order and the same does not warrant any interference.

8. Quantum of compensation: as rightly contended by the learned counsel appearing for the appellant/claimant, as per the discharge summary (ex.p5) issued by Royapetta Government Hospital, Chennai, the appellant/claimant underwent a surgery on 08.05.2004 and after the surgery, till 05.07.2004, he was continuously treated in the hospital. It is also seen that 'implant' treatment was given to the appellant/claimant. Furthermore, it is mentioned in the discharge summary that the appellant/ claimant could not bear heavy weight and the

treatment is to be continued. In addition to that, Dr.Ponnappan (PW3) has also assessed the disability as 65%. This Court is of the considered view that, as assessed by the doctor, the percentage of disability may be fixed at 65% and a sum of Rs.1,500/- per percentage may be awarded.

Calculation:

$$\begin{aligned}\text{Disability} &= 1,500 \times 65\% \\ &= \text{Rs.}97,500/-\end{aligned}$$

9. The compensation awarded under the head pain and sufferings is enhanced from Rs.10,000/- to Rs.25,000/-. A sum of Rs.15,000/- is awarded towards transportation. Since, the appellant/claimant took treatment at Government Hospital, a sum of Rs.12,000/- is awarded towards attender's charges. No amount is awarded by the Tribunal under the head 'loss of amenities' and therefore, a sum of Rs.10,000/- is awarded under the same. All the other heads awarded by the Tribunal is hereby confirmed.

10. Accordingly, the award of the Tribunal in M.C.O.P.No. 504 of 2005 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Disability	Rs.75,000/-	Rs.97,500/-
2.	Transport to Hospital	Rs.5,000/-	Rs.15,000/-
3.	Extra nourishment	Rs.10,000 /-	Rs.10,000 /-
4.	Attender's charges	NIL	Rs.12,000/-
5.	Loss of amenities	NIL	Rs.10,000/-
6.	Pain and sufferings	Rs.10,000/-	Rs.25,000/-
7.	Loss of income	Rs.12,000/-	Rs.12,000/-
	Total	Rs.1,12,000 /-	Rs.1,81,500/-

11. The Tribunal after deducting 25% from the sum of Rs.1,12,000/-, awarded Rs.84,000/- as compensation to the appellant claimant. In the present appeal also, due to the contributory negligence on the part of the appellant/claimant, 25% is deducted from the sum of Rs.1,81,500/-. Therefore, the appellant/claimant is entitled to a sum of Rs.1,36,125/- together with interest at the rate of 7.5% per annum.

12. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is

enhanced from Rs.84,000 /- to Rs.1,36,125/-. It is made clear that the appellant/claimant is entitled to interest only at the rate of 7.5% per annum.

(iii) The respondent herein - Tamil Nadu State Transport Corporation is directed to deposit the entire compensation of Rs.1,36,125 /- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 504 of 2005, dated 17.11.2008, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Gingee within a period of twelve weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount after following the due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Court/
Motor Accidents Claims Tribunal, Gingee.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.T.Dhanya Kumar, Advocate, Sr.No. 14326

+1 cc to Mr.S.V.Vasantha Kumar, Advocate, Sr.No. 14010

सत्यमेव जयते

C.M.A.No.1379 of 2011

EV(CO)
CSL/23.07.2019

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