

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.1224 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Karnataka State Road Transport
Corporation Limited, K.H.Road,
Bangalore 560 027. Appellant/Respondent

Vs

Mahendran Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.2458 of 2013 dated 15.10.2014 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Krishnagiri.

For Appellant : Mr.T.Thiyagarajan

For Respondents : Mr.Mukund R Pandian

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.2458 of 2013 dated 15.10.2014, on the file of the Motor Accident Claims Tribunal, the Special Subordinate Judge, Krishnagiri. The appeal has been preferred by the appellant/Insurance Company, against the award made by the Tribunal at Rs.6,07,564/- against the claim of Rs.7,00,000/-.

2. The brief facts leading to the claim petition is that on 01.07.2011, at about 12.45 hours, when the claimant was travelling as a pillion rider in the TVS Star City Motorcycle bearing Registration No. TN 24 J 6628. The rider of the said motorcycle was proceeding on the Kannadahalli junction road in Krishnagiri to Mathur NH 66 Road, on the left side of the road, slowly and cautiously, observing the traffic rules and regulations. At that time, the driver of the KSRTC bus bearing Registration No. KA 42 F 355 belonging to the appellant herein came in the opposite direction in a rash and negligent manner, at an uncontrollable speed, dashed the said motorcycle. As a result of which, the claimant sustained multiple injuries and also sustained loss of earning, pain and

sufferings, Medical expenses. Hence, the claimant claimed a sum of Rs.7,00,000/- as compensation as against the insurer of the offending vehicle/ appellant herein.

3. The Tribunal after analysing the oral pleadings and evidence on record has concluded that the accident occurred only due to the rash and negligent driving on the part of the driver of the bus bearing Registration No. KA 42 F 355 and since the appellant being the insurer of the said vehicle was liable to pay the said compensation. The Tribunal has awarded a compensation of Rs.6,07,564/- together with interest at the rate of 6% to the claimant.

4. Aggrieved against the liability as well as the quantum determined by the Tribunal, the appellant/Insurance Company has preferred this appeal.

5. Heard, both sides and perused all the materials available on record.

6. The learned counsel appearing for the appellant / Insurance Company would submit that the Tribunal has failed to note that motorcycle which was coming in the opposite direction had dashed against the right side bumper of the vehicle and as such the accident has taken place due to the rash and negligent driving of the motorcycle. Further, two vehicles are involved in the accident and as such other vehicles Insurance Company and the owner ought to have been made as a party and non joinder of parties is fatal to the case of the respondent. The liability fastened on the appellant is only based on the evidence of PW.1 and Ex.P1, which is not proper. The other aspect raised by the appellant is that the claimant was aged about 49 years as per Ex.P2, the Tribunal ought to have been applied the multiplier of 13 instead of 15. Further, without any proof and supporting document, the monthly income of the claimant has been taken at Rs.5,500/-, which is highly excessive. The Tribunal erred in fixing the disability at 45% merely based on the documents without examining the respondent, which is also on the higher side. A huge sum by taking the monthly income and sums awarded under various heads are also on the higher side.

7. He further submitted that by stating that when the damages caused on the right side bumper of the bus, which is clearly proves the fact that the rider of the motorcycle caused the damages as well as the accident. Hence, the Tribunal without considering these aspects, fastened the liability entirely on the appellant is highly improper.

8. The learned counsel appearing for the respondent/claimant contended that the driver of the said bus did not possess any valid driving license at the time of the

accident. It is observed that the rash and negligent driving on the part of the driver of the bus, which is very much proved by way of registering the First Information Report. The appellant herein did not take any proper steps to prove that the accident caused only due to the rash and negligent riding of the rider of the motorcycle. Hence in the absence of any proper evidence or documents, the Tribunal by fixing the negligence on the part of the driver of the bus is very much reasonable.

9. On a perusal of the records, it is observed that the rash and negligent driving on the part of the driver of the KSRTC bus as per Ex.P1/ First Information Report. Apart from that, the claimant has proved through oral and documentary evidence that the accident had occurred due to the rash and negligent driving of the bus. Ex.P4/Motor Vehicle's Inspector Report reveals the fact that the appellant herein has stated that the driver of the bus had no valid driving licence at the time of the accident. Hence, the appellant/ Insurance Company is alone liable to pay the compensation to the claimant. When the injured person himself has furnished the details that he has aged about 49 years at the time of the accident and the Tribunal has taken the age of the claimant at 39 is highly improper. Verifying the said document, it is true that in the claim application, he has stated his age as 39 years, but in the accident register, he himself given his age as 49 years. The age mentioned at 49 is correct. The Tribunal without considering the age of the deceased, adopted the multiplier as 15 instead of 13. The claimant was working as a mason and was earning a sum of Rs.5,500/- per month, which is proper and reasonable one. In support of the evidence of PW.1, the Doctor was examined as PW.2 and he has filed proof affidavit. In the proof affidavit as well as the Disability Certificate(Ex.P7), the doctor has stated that he has perused the Wound Certificate and X-ray report, found that the fracture of Femur fracture Right operated closed IMIL Left knee. Fracture shaft of femur and ORIF with nail operated was 10 degree with malunion. Due to which, the claimant was not able to walk and stand for a long time. Hence, the Doctor assessed the disability at 55%. The appellant has not examined any expert Doctor to disprove the percentage of Disability issued by PW.2. As per Exs. P3, P4 and P7, the Tribunal has taken the disability at 45%, which is proper and reasonable.

10. Now coming to the determination of compensation by the Tribunal, by taking the monthly income of the claimant at Rs.5,500/- and the annual income would be Rs.66,000/-. The Tribunal has taken the multiplier of 15 instead of 13. By adopting the proper multiplier and taken the disability at 45%, the loss of earning capacity would be Rs.3,86,100/- $(66,000/- \times 45/100 \times 13)$, which is proper and reasonable. The sum awarded under the head of partial loss of income, by awarding the sum for a period of four months has been very much objected by the appellant and the partial loss of income

during the treatment period is set aside. The other grievance raised by the appellant is that when there is no reference was made for future medical expenses and the same is highly improper. On hearing both sides and there is no reference made for future medical expenses, the sum awarded under the said head is set aside. The sum awarded by the Tribunal under the heads of pain and sufferings, Nutrition and Transportation, Medical bills, Attender charges and loss of expectation of life are found very much proper and reasonable, hence, this Court is not inclined to make any modification under the said heads. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:

S.No	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
1.	Loss of earning capacity	4,45,500.00	3,86,100.00
2.	Pain and sufferings	50,000.00	50,000.00
3.	Nutrition and transportation	20,000.00	20,000.00
4.	Medical bills	25,064.00	25,064.00
5.	Future medical expenses	10,000.00	
6.	Attender charges	10,000.00	10,000.00
7.	Partial loss of income	22,000.00	
8.	Loss of expectation of life	25,000.00	25,000.00
	Total	6,07,564.00	5,16,164.00

Thus, the claimant is entitled to a sum of Rs.5,16,164/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

11. In the result,

(i)The Civil Miscellaneous Appeal is partly allowed. No costs. Consecuntly, connected MP is closed.

(ii)The compensation awarded by the Tribunal is reduced from Rs.6,07,564/- to Rs.5,16,164/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)The appellant/Transport Corporation, is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RIGS within a period of two weeks thereon.

(iv) It is represented that the entire compensation awarded by the tribunal was already deposited by the appellant/ Transport Corporation. Hence, the appellant / Transport Corporation is at liberty to withdraw the excess award amount.

Sd/-

Assistant Registrar(CS-III-MDU)

//True copy//

Sub Assistant Registrar

vkr

To
The Special Subordinate Judge,
The Motor Accidents Claims Tribunal,
Krishnagiri.

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

+1cc to Mr.T.Thiyagarajan, Advocate SR.No.77066

+1cc to Mr.Mukund R Pandian, Advocate SR.No.77548

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and
M.P.No.1 of 2015

SVI (CO)
GMY (20/08/2020)

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