

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.1211 of 2012

M.Palaniappan

...Appellant/ Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
[Kumbakonam Division] Ltd.,
Kumbakonnam-621 306.

... Respondent/ Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 01.08.2011 made in M.C.O.P.No. 2389 of 2007 on the file of the Motor Accidents Claims Tribunal, [III Court of Small Causes], Chennai.

For Appellant : Mr.V.Mohan Choudary

For Respondent : Mr.D.Raghu

JUDGMENT

The appellant is the claimant in M.C.O.P.No.2389 of 2007, on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes Court, Chennai. He has filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 17.07.2006.

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

(i) On 17.07.2006, at about 6.00 hours, the appellant/claimant was a passenger sitting at the front top foot board of the respondent TNSTC Bus bearing Registration No.TN 45 N 1971 and while so, the driver of the bus drove the same rashly and negligently in between Kedilam bridge and X road and due to over speed and said driver lost control and suddenly cut across to right and applied sudden brake, thereby, the claimant sustained grievous injuries.

(ii) 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.6,00,000/- to him.

3. The learned Tribunal, after analysing the evidence on record, held that the claimant is entitled for compensation of Rs.3,06,865/-. Having 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. After hearing both the parties, the factum of the accident involvement of the bus and the manner of the accident and finding of the Tribunal that the accident has taken place due to the negligence on the part of the driver of the offending bus are not in dispute. Accordingly, the said findings are hereby confirmed.

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

6. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exhibits P1 to P17 were marked. On behalf of the respondent-Transport Corporation, R.W.1 was examined and no documents were marked.

7. Based upon the evidence of P.W.1, the Tribunal has held that the claimant was travelled on the foot-board has contributed to the accident and accordingly, held that the Transport Corporation is liable to pay only 75% and fixed the liability upon the claimant/passenger at 25% and awarded compensation is fixed at Rs.4,09,150/- and the claimant also composite negligence to the accident at the ratio of 25% and hence, the claimant is entitled only 75% compensation of Rs.3,06,862.50, the same is rounded to Rs.3,06,865/-

8. Challenging the above finding as to contributory negligence as well as on the point of quantum, the claimant has preferred this appeal.

9. On perusal of the evidence of P.W.1 and also Exhibit P1-F.I.R, it is seen that the appellant/claimant was travelled only on the top most foot-board. In other words, he was sitting on the floor of the bus. In such circumstances, in view of the rash and negligent driving of the driver of the Transport Corporation bus is not properly negotiating pit, which has resulted in a jerk. On such jerk, the person who has sitting on the floor of the bus slipped through the entrance and fell down and sustained grievous injury and hence, the negligence of 25% fixed on the part of the claimant is unwarranted and the same is hereby stands vacated.

10. Taking into consideration of the medical evidence of P.W.2-Doctor K.J.Mathiazhagan coupled with Exhibit P16, the Tribunal has fixed the disability at 60% and accordingly, awarded Rs.2,000/- per percentage and awarded a sum of Rs.1,20,000/- and the same is hereby confirmed.

11. After going through the evidence, it is seen that for the 'loss of income' during the period of treatment, the Tribunal has taken the amount mentioned in the pleadings. However, as per Exhibit P14- Pay Certificate, the claimant worked as clerk in the State Bank of India and drawn a sum of Rs.15,313/- and accordingly, the same is rounded to Rs.15,000/-.

12. Due to the injuries sustained in the accident, the appellant/claimant would have been prevented from attending his work to a maximum of 6 months. Hence, a sum of Rs.90,000/- has awarded towards 'loss of income'. (Rs.15,000x6).

13. With regard to Exhibits P4 to P9-medical expenses, Rs.1,79,202/- has awarded by the Tribunal and the same is hereby confirmed. The compensation awarded under the heads 'Transportation', 'extra nourishment' and 'pain & sufferings', Rs.10,000/-, Rs.5,000/- and Rs.25,000/- has awarded by the Tribunal and the same are hereby confirmed.

14. Taking into consideration that the appellant/claimant was treated as in-patient for 55 days and also suffered disability at 65% and 3 surgeries have been taken place, the appellant/claimant is entitled a sum of Rs.15,000/- towards 'attender's charges'. No amount is awarded by the Tribunal under the head 'loss of amenities' and therefore, a sum of Rs.20,000/- is awarded under the same.

15. Accordingly, the award of the Tribunal in M.C.O.P.No. 2389 of 2007 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of income for 6 months	Rs. 69,948/-	Rs. 90,000/- (Rs.15,000x6)
2.	Transportation	Rs. 10,000/-	Rs. 10,000/-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
3.	Extra Nourishment	Rs. 5,000/-	Rs. 5,000/-
4.	Medical Expenses	Rs.1,79,202/-	Rs.1,79,202/-
5.	Pain and sufferings	Rs. 25,000/-	Rs. 25,000/-
6.	Disability of 60% at the rate of Rs.2,000/- per disability	Rs.1,20,000/-	Rs.1,20,000/-
7.	Loss of amenities	-----	Rs. 20,000/-
8.	Loss of attender's charges	-----	Rs. 15,000/-
	Total	Rs.4,09,150/- Rs.3,06,865/- (at 75%)	Rs.4,64,202/-

The compensation awarded by the Tribunal is enhanced from Rs.3,06,865/- to Rs.4,64,202/- which shall carry interest at the rate of 7.5% per annum.

16. 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.3,06,865/- to Rs.4,64,202/- 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.4,64,202/- (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. 2389 of 2007 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai 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(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The III Court of Small Causes, Chennai.

2. The Section Officer,
V.R.Section, High Court, Chennai.

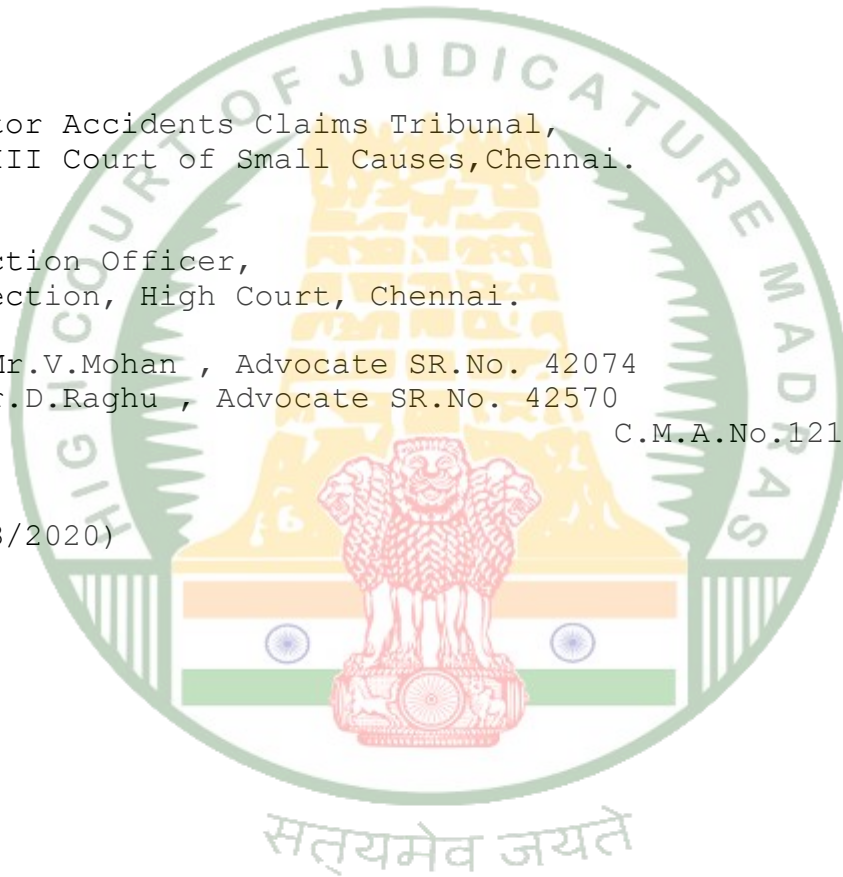
+2ccs to Mr.V.Mohan , Advocate SR.No. 42074

+1cc to Mr.D.Raghu , Advocate SR.No. 42570

C.M.A.No.1211 of 2012

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A.SK(02/03/2020)



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