

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1706 of 2015 and 1972 of 2016
and M.P.No.1 of 2015

C.M.A.No.1706 of 2015

Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division Rep. by its
Managing Director
No.31.137, Salamedu
Villupuram. ... Appellant/Respondent

Vs.

Mohan ... Respondent/Petitioner

C.M.A.No.1972 of 2016

Mohan ... Appellant/Petitioner

vs.

Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division Rep. by its
Managing Director
No.31.137, Salamedu
Villupuram. ... Respondent/Respondent

Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 25.07.2014 made in M.C.O.P.No.3158 of 2011 on
the file of Motor Accident Claims Tribunal, IV Court of Small
Causes, Chennai.

In C.M.A.No.1706 of 2015

For Appellant : Mr.K.J.Sivakumar
For Respondent : Mr.K.Varadhakamaraj

In C.M.A.No.1972 of 2016

For Appellant : Mr.K.Varadhakamaraj
For Respondent : Mr.K.J.Sivakumar

C O M M O N J U D G M E N T

C.M.A.No.1706 of 2015 is filed by the Transport Corporation against the award dated 25.07.2014 made in M.C.O.P.No.3158 of 2011 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

C.M.A.No.1972 of 2016 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 25.07.2014 made in M.C.O.P.No.3158 of 2011 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

4.The claimant filed the claim petition in M.C.O.P.No.3158 of 2011 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.06.2011. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation and directed the respondent/Transport Corporation to pay a sum of Rs.3,72,550/- as compensation to the claimant. Against the said award dated 25.07.2014 made in M.C.O.P.No.3158 of 2011, the respondent/Transport Corporation has come out with C.M.A.No.1706 of 2015 challenging the liability as well as quantum of compensation. Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.1972 of 2016 seeking enhancement of compensation.

5.The learned counsel appearing for the respondent/Transport Corporation contended that there is no material on record to fix entire negligence on the part of the driver of the bus belonging to the respondent/Transport Corporation. The Tribunal erred in fixing negligence based on F.I.R. without considering the evidence of R.W.1/driver of the bus. The Tribunal failed to see two heavy vehicles were involved in the accident and driver, owner and Insurance Company of lorry are also necessary parties. The Tribunal without fixing the contributory negligence, fixed

entire negligence on the part of the driver of the bus belonging to the respondent. The monthly income of the claimant fixed by the Tribunal is excessive. The amounts granted by the Tribunal under other heads are excessive and prayed for setting aside the award of the Tribunal.

6. Per contra, the learned counsel appearing for the claimant contended that the accident has occurred only due to rash and negligent driving by the driver of the bus and the driver of the bus only dashed against the lorry. The claimant has deposed to that effect and marked F.I.R., which was registered against the driver of the bus. The claimant was working as a mason and due to his injury, he is unable to use his left hand completely and he is doing his work only by using his right hand. The claimant has taken treatment in the hospital from 01.06.2011 to 07.06.2011 and 23.06.2011 to 27.06.2011. He examined P.W.2/Doctor to prove the nature of injuries sustained by him. The Tribunal has erroneously reduced percentage of disability from 70% to 65% and granted only Rs.2,000/- per percentage. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the respondent/Transport Corporation and perused the materials available on record.

8. From the materials available on record, it is seen that the claimant as P.W.1 has deposed that the driver of the bus/R.W.1 drove the bus in a rash and negligent manner and dashed against the lorry while overtaking the said lorry. F.I.R. was registered against the driver of the bus. The respondent/Transport Corporation in its counter statement has stated that while the driver of the lorry was overtaking the bus, he dashed against the side of the bus and caused the accident. On the other hand, R.W.1/driver of the bus has deposed that while he was overtaking the lorry, the lorry dashed on the front side of the bus. R.W.1 admitted that F.I.R. was registered only against him and the criminal case is pending. R.W.1 and the respondent/Transport Corporation did not file any objection to the F.I.R. They have not given any complaint against the driver of the lorry. Considering the entire materials on record in its entirety, I hold that there is no error in the finding of the Tribunal fixing negligence on the part of the bus.

9. As far as quantum of compensation is concerned, the Tribunal accepting the evidence of P.W.2/Doctor reduced the percentage of disability from 70% to 65% and awarded compensation at Rs.2,000/- per percentage. The accident is of the year 2011. The compensation awarded by the Tribunal towards disability is meagre. The claimant is

entitled to compensation for 70% disability by fixing a sum of Rs.3,000/- per percentage. The amount awarded by the Tribunal towards disability is modified to Rs.2,10,000/- (Rs.3,000/- X 70%) by awarding a sum of Rs.3,000/- per percentage. At the same time, the Tribunal has granted a sum of Rs.1,00,000/- towards loss of future earning and Rs.15,000/- towards loss of earning and the same are not interfered with. The Tribunal has not awarded any amount towards loss of amenities and this Court awards a sum of Rs.10,000/- towards loss of amenities. The amounts awarded by the Tribunal towards attendant charges and extra nourishment are meagre and this Court enhances the same to Rs.10,000/- and Rs.20,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,30,000	2,10,000	Enhanced
2.	Pain and suffering	25,000	25,000	Confirmed
3.	Extra nourishment	15,000	20,000	Enhanced
4.	Transportation	10,000	10,000	Confirmed
5.	Loss of earning	15,000	15,000	Confirmed
6.	Attendant charges	5,000	10,000	Enhanced
7.	Damage to clothes and articles	3,000	3,000	Confirmed
8.	Medical expenses	69,550	69,550	Confirmed
9.	Loss of future earnings	1,00,000	1,00,000	Confirmed
10.	Loss of amenities	-	10,000	Granted
	Total	3,72,550	4,72,550	Enhanced by Rs.1,00,000/-

10. With the above modification, C.M.A.No.1706 of 2015 filed by the respondent/Transport Corporation is dismissed and C.M.A.No.1972 of 2016 filed by the claimant is partly allowed. The compensation of Rs.3,72,550/- awarded by the Tribunal is hereby enhanced to Rs.4,72,550/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the claimant shall not be entitled for any interest for the delay period on the enhanced amount of Rs.1,00,000/-. The respondent/Transport Corporation is directed to deposit the entire award amount now determined by this Court 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 claimant is permitted to withdraw the entire amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kj
To

1.IV Judge
Small Causes Court
The Motor Accident Claims Tribunal
Chennai.

+1 cc to Mr.K.J.Sivakumar Advocate sr39850
+1 cc to Mr.K.Varadhakamaraj Advocate sr40036

C.M.A.Nos.1706 of 2015 and 1972 of 2016
and M.P.No.1 of 2015

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