

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1735 of 2015 & M.P.No.1 of 2015
and Cross Objection No.26 of 2016

C.M.A.No.1735 of 2015

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan House, Annasalai,
Chennai-600 002. .. Appellant

Vs.

M.Govindaraj .. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.09.2013 made in M.C.O.P.No.2218 of 2008 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.J.Siva Kumar

For Respondent : Mr.V.Mohanchoudary

Cross Objection No.26 of 2016

M.Govindaraj .. Cross objector

Vs.

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan House, Annasalai,
Chennai-600 002. .. Respondent

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 06.09.2013 made in M.C.O.P.No.2218 of 2008 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Cross Objector : Mr.V.Mohanchoudary

For Respondent : Mr.K.J.Siva Kumar

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

The Civil Miscellaneous Appeal has been filed by the Transport Corporation against the award dated 06.09.2013 made in M.C.O.P.No.2218 of 2008 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

The Cross-Objection has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 06.09.2013 made in M.C.O.P.No.2218 of 2008 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.Both the appeal and cross-objections are arising 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 as per their respective ranks in the claim petition for the sake of convenience.

4.The appellant/Transport Corporation is the respondent in M.C.O.P.No.2218 of 2008 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. The claimant/cross objector filed the said claim petition, claiming a sum of Rs.13,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.04.2008.

5.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only 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.8,49,000/- as compensation to the claimant.

6.Against the said award dated 06.09.2013 made in M.C.O.P.No.2218 of 2008 the respondent-Transport Corporation has come out with the present appeal challenging the liability fastened on them as well as the quantum of compensation awarded by the Tribunal. Not being satisfied with the award amount granted by the Tribunal, the claimant has come out with the Cross-Appeal seeking for enhancement of compensation awarded by the Tribunal.

7.The learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal erred in fixing the negligence on the part of the driver of the bus solely based on the F.I.R. which is registered against the driver of the bus. The Tribunal did not consider the evidence let in by the respondent as R.W.1 and erred in relying on the evidence of

P.W.1, whose evidence is not corroborated by any other witness. The Tribunal ought to have seen that the claimant jumped from the moving bus and got injured. The Tribunal ought to have awarded compensation on percentage basis. In view of the nature of injuries, the Tribunal erroneously awarded compensation and without there being any materials, fixed monthly income of the claimant as claimed by him. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

8. Per Contra, the learned counsel appearing for the claimant/cross objector contended that the Tribunal ought to have awarded more amount towards loss of income. The claimant examined himself as P.W.1 and proved that the accident occurred only due to rash and negligent driving by the driver of the bus. The claimant was taking treatment as inpatient for 14 days from 02.04.2008 to 16.04.2008. The Tribunal has not awarded any amount towards attendant charges and loss of amenities and also amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

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

10. From the materials available on record, it is seen that it is the contention of the claimant that the driver of the bus overtook the motorcycle in which claimant was traveling and suddenly turned without any signal and caused the accident. In the counter statement, it is the contention of the respondent-Transport Corporation that the claimant tried to overtake the bus in a rash and negligent manner while the driver was cautiously turning the bus to enter into the depot. The learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal failed to consider the evidence of P.W.1. From the award of the Tribunal, it is seen that the respondent-Transport Corporation has not let in any evidence. Further in the grounds of appeal, the respondent-Transport Corporation has taken a stand that the claimant got injured when he jumped from the bus, which is contrary to the stand taken by the respondent-Transport Corporation in the counter statement. The Tribunal considering the evidence of claimant as P.W.1, F.I.R. and rough sketch, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

11.As far as quantum of compensation is concerned, considering the nature of injuries, percentage of disability by giving reason, the Tribunal reduced the percentage of disability and considering the avocation of claimant applied multiplier method and awarded compensation towards loss of earning capacity. The claimant has taken treatment in hospital as inpatient for 14 days from 02.04.2008 to 16.04.2008. The Tribunal has not awarded any amount towards attendant charges and loss of earning capacity. Therefore, a sum of Rs.10,000/- is granted towards attendant charges and loss of earning capacity. The amounts granted by the Tribunal under all other heads are 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.	Loss of income	30,000/-	30,000/-	confirmed
2.	Transportation	10,000/-	10,000/-	confirmed
3.	Extra Nourishment	10,000/-	10,000/-	confirmed
4.	Damage to clothes	1,000/-	1,000/-	confirmed
5.	Medical expenses	5,44,000/-	5,44,000/-	confirmed
6.	Pain and Suffering	50,000/-	50,000/-	confirmed
7.	Permanent disability	2,04,000/-	2,04,000/-	confirmed
8.	Attendant charges and loss of amenities	-	10,000/-	granted
	Total	Rs.8,49,000/-	Rs.8,59,000/-	enhanced by Rs.10,000/-

12.The compensation awarded by the Tribunal at Rs.8,49,000/- is hereby enhanced to Rs.8,59,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the enhanced 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 to the credit of M.C.O.P.No.2218 of 2008. On such deposit, the claimant/cross

objector is permitted to withdraw the enhanced award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs.

13. In the result, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gbi/krk

To

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

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

+1 cc to Mr.K.J.Sivakumar, Advocate, S.R.No.7715

+2 ccs to Mr.V.Mohan Choudary, Advocate, S.R.No.7842

C.M.A.No.1735 of 2015 & M.P.No.1 of 2015
and Cross Objection No.26 of 2016

KS (CO)
SSM(23/05/2019)

WEB COPY