

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :12.04.2019  
Judgment Delivered on :01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2064 of 2012

S.Ganesh (minor)  
Rep.by his father J.Sivakumar ... Appellant/Petitioner

..Versus..

The Managing Director,  
Metropolitan Transport Corporation Ltd.,  
Pallvan Salai,  
Chennai- 600 002 ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 30.04.2012 made in M.C.O.P.No.4266 of 2009 on the file of the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.K.S.Suresh

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 30.04.2012 made in M.C.O.P.No.4266 of 2009 on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai.

2. The essence of the case is that on 23.10.2009 at about 8.45 a.m., while the claimant was travelling as a passenger in MTC bus bearing Registration No.TN 01 N 5419 along K.H.Road near Kambar Arangam Bus stop speed breaker, at that time, the MTC bus was driven by the driver and it stopped at the Kambar Arangam bus stop and without caring for the passengers to get down, suddenly the driver took the bus in a rash and negligent manner, thereby, the claimant fell down and sustained grievous injuries. The driver of the bus is responsible for the accident. The respondent-Transport Corporation as the owner of the bus, is

liable to pay compensation. Therefore, the claim petition was filed seeking compensation of Rs.3,00,000/-.

3. The respondent-Transport Corporation has filed a counter stating that due to slow speed of the bus over the speed breaker, the students travelling in foot board suddenly got down from the back side footboard in a rash and negligent manner, since their school was nearby the bus stop and they hurried by getting down to attend the school in time in the morning by gaining the advantage of speed breaker. Though some students got down safely, the claimant's legs slipped while getting down from the slow moving bus, due to which, he lost his balance and fell down and sustained injuries. The accident was caused due to the sudden fall of the student from the moving bus at the speed breaker point.

4. The Tribunal awarded a sum of Rs.62,000/- as compensation to the claimant. However, the claimant, having not been satisfied with the award of compensation made by the Tribunal, seeks enhancement of compensation by filing this appeal.

5. Before the Tribunal, the claimant's father examined himself as P.W.1. Besides, Mr.Sivaraman-eye witness was examined as P.W.2 and Dr.Mathiazhagan was examined as PW.3 and the claimant has produced nine documents as Exs.P1 to P9. On the side of the respondent, the driver of the respondent's Corporation was examined as R.W.1 and no documents have been produced.

6. The Tribunal has held that the accident had occurred due to the rash and negligence driving of the driver of the Corporation Bus and there was negligence on the part of the claimant also and accordingly, fixed the contributory negligence on the driver and the claimant at 50:50. Taking into consideration the injury sustained by the claimant, the Tribunal has awarded a sum of Rs.1,24,000/- and after deducting 50% towards contributory negligence, the claimant was entitled to a sum of Rs.62,000/- and hence, the appeal is filed by the claimant seeking enhancement of compensation.

7. The learned counsel for the appellant would submit that the Tribunal has committed an error in fixing the contributory negligence at 50% on the part of the appellant/claimant without any reason and the quantum of compensation as such awarded by the Tribunal under different heads is very low.

8. Per contra, the learned counsel for the respondent-Transport Corporation Bus has made submissions in support of the

order of the Tribunal.

9. Heard the counsel for both sides and perused the materials placed on record.

10. The father of the claimant/injured was examined as P.W.1. From the evidence of the eye witness P.W.2, it appears that on 23.10.2009 at about 8.30 a.m., while, P.W.2 was travelling from Villivakkam to Broadway and travelling in the MTC Bus bearing Registration No.TN 01 N 5419 and sitting near the rear side foot steps, at about 8.45a.m., 10 feet before the bus stop ICF Kambar Arangam, the driver stopped the bus and said those who have to get down at Kambar Arangam Bus stop may get down from the bus at this place. Hence, from both the entrances, the students and passengers were getting down from the bus. At last, a 13 year old student while getting down from the bus, the driver took the bus in a rash and negligent manner and as a result, he fell down and sustained injuries.

11. On the contrary, the driver of the bus who deposed as R.W.1 stated that while the bus was proceeding from Villivakkam to Broadway at about 8.45 a.m., at ICF C Avenue salai Junction, the bus was slowly moving at the speed breaker and the passengers at the bus shouted and the conductor blew whistle. The driver stopped the bus and got down from the bus and saw that one student trying to get down from the bus at the speed breaker, lost control, fell down and sustained injuries.

12. From the evidence of R.W.1, this Court comes to the conclusion that the driver has not even witnessed or does not even know as to how the accident had taken place.

13. On perusal of Ex.P1-F.I.R and oral evidence of P.W.2 coupled with the oral evidence of R.W.1, it appears that the accident was due to the rash and negligent driving of the driver of the MTC bus and the claimant, P.W.2's is contributory to contents of Ex.P1-F.I.R. The evidence of R.W.1 is also contradicted to counter averments. At the same time, it is the duty of the conductor not to allow the passengers to get down from the running bus. Having perused both sides evidences, the Tribunal has concluded that the accident had happened due to the rash and negligent driving of the driver of the MTC bus and the claimant and the liability is fixed for the driver of the bus and the claimant is 50:50.

14. In the absence of any contra evidence, the version of P.W.2, appears as clear and cogent and hence, taking into consideration the manner of the accident as spoken to by P.W.2.

and in the absence of any positive evidence regarding the manner of the accident in the notion of R.W.1, this Court is of the considered view that the contributory negligence is to be fixed at 75% on the part of the driver of the M.T.C bus and 25% on the part of victim and with this modification, the contributory negligence is fixed at 75:25.

15. On the point of quantum, it appears from Ex.P3-Discharge summary that the claimant was admitted as an in-patient at New Hope Hospital from 24.10.2009 to 29.10.2009. He had suffered fracture shaft of right Femur and open reduction with plating was done. Ex.P9-Disability Certificate issued by P.W.3 Dr.Mathiazhagan also speaks about the same. According to the claimant, his age was 13 years and was studying VII standard at the time of accident and accordingly, the disability has been spoken to by P.W.3 Dr.Mathiazhagan and the Disability Certificate issued by him is marked as Ex.P9. The Doctor has assessed his disability at 45%. On a perusal of cross examination of P.W.3, he admits that he did not give treatment to the injured. No X-ray report is filed. Considering the nature of injury sustained, the assessment of disability by P.W.3 appears to be on the higher side and the disability was fixed at 40% rightly by the Tribunal. Hence, considering the age and injuries sustained by the claimant, at the rate of Rs.2,000/- per percentage, a sum of Rs.80,000/-(40%x2000) awarded by the Tribunal and the same is hereby confirmed.

16. Further, under the heads of 'pain and suffering', 'Extra nourishment' and 'Damage to clothing', the Tribunal awarded Rs.35,000/-, Rs.5,000/- and Rs.1,000/- and the same are hereby confirmed. With regard to 'transportation', the award is hereby enhanced from Rs.3,000/- to Rs.5,000/-. With regard to 'attender charges' and 'loss of amenities', this Court awards a sum of Rs.3,000/- and Rs.3,000/- respectively. In order to prove the claim for 'medical expenses', no medical bills along with the medical prescriptions are filed. Hence, nothing is allowed under this head before the Tribunal.

17. Accordingly, the award of the Tribunal in M.C.O.P.No.4266 of 2009 is modified as follows:

| Sl. No | Particulars          | Amount granted by the Tribunal | Amount granted by this Court |
|--------|----------------------|--------------------------------|------------------------------|
| 1.     | Permanent disability | Rs. 80,000/-                   | Rs. 80,000/-                 |
| 2.     | Pain and sufferings  | Rs. 35,000/-                   | Rs. 35,000/-                 |
| 3.     | Medical expenses     | -----                          | -----                        |

| Sl. No | Particulars           | Amount granted by the Tribunal      | Amount granted by this Court |
|--------|-----------------------|-------------------------------------|------------------------------|
| 4.     | Extra Nourishment     | Rs. 5,000/-                         | Rs. 5,000/-                  |
| 5.     | Transport to Hospital | Rs. 3,000/-                         | Rs. 5,000/-                  |
| 6.     | Damage to clothing    | Rs. 1,000/-                         | Rs. 1,000/-                  |
| 7.     | Attender's charges    | -----                               | Rs. 3,000/-                  |
| 8.     | Loss of amenities     | -----                               | Rs. 3,000/-                  |
|        | Total                 | Rs.1,24,000 /-<br>(50%=Rs.62,000/-) | Rs.1,32,000 /-               |

The compensation awarded by the Tribunal is enhanced from Rs.62,000/- to Rs.1,32,000/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment.

18. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.62,000/- to Rs.1,32,000/-.

(iii) The appellant/claimant is directed to pay the court fee, if any, for the enhanced compensation amount.

(iv) The respondent/Transport Corporation Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.99,000/- (less the amount if any already deposited) being 75% 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. 4266 of 2009 on the file of the Motor Accidents Claims Tribunal, (IV Court of Small Causes) Chennai, within a period of eight weeks from the date of receipt of a copy of this judgment.

(v) The award amount shall be deposited in a Nationalized bank in fixed deposit till the minor appellant/claimant attains the majority and the father of the minor appellant is entitled to withdraw the accrued interest once in three months directly from the Bank.

Sd/-

Assistant Registrar  
(Spl Cell-Retd Judges)

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Sub Assistant Registrar

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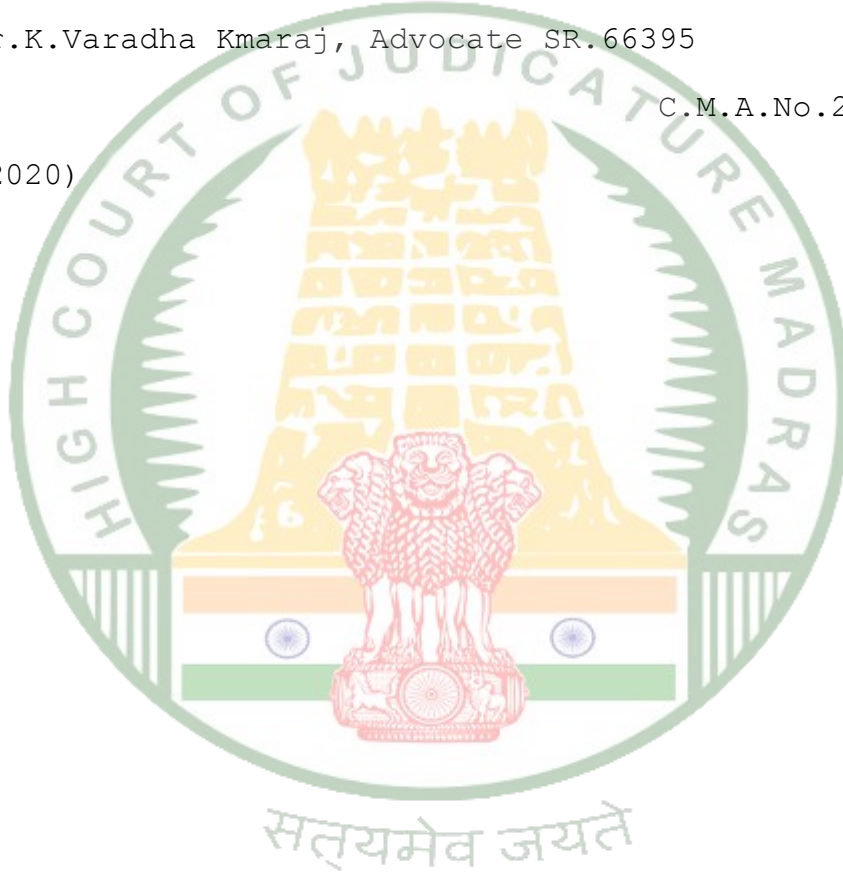
1.The Motor Accidents Claims Tribunal,  
(IV Court of Small Causes), Chennai.

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

+lcc to Mr.K.Varadha Kmaraj, Advocate SR.66395

C.M.A.No.2064 of 2012

SJ(CO)  
CB(05/02/2020)



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