

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM :

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.2202 of 2019
and CMP.No.9264 of 2019

The Managing Director, Tamil Nadu
State Transport Corporation
(Coimbatore) Ltd.,
Coimbatore.

...Appellant/2nd respondent

Vs.

1.J.Prabhu

...1st Respondent/ Petitioner

2.M.Manikanda Raja

...2nd Respondent/1st Respondent

APPEAL under Section 173 of the Motor Vehicles Act, 1988
against the Award, dated 24.8.2018 made in MCOP.No.353 of 2016
on the file of the Motor Accidents Claims Tribunal (Principal
Subordinate Judge), Tirupur.

For Appellant : Mr.K.J.Sivakumar

For Respondent-1 : Mr.K.Myilsamy

R2 : Set Exparte before the
Tribunal

JUDGMENT

The Transport Corporation is on appeal before this Court
challenging the award passed by the Motor Accidents Claims
Tribunal (hereinafter called the Tribunal) in a road accident,
causing grievous injuries to the first respondent herein /
claimant.

2. The accident occurred on 26.12.2015 at 1.30 PM in the
Kattur to Katturpudhur Road, in front of Kattur, Kamathottam. On
the date of accident, the first respondent herein / claimant was
riding Hero Honda Splendor two-wheeler bearing Regn.No.TN-42-C-
2054 from North to South direction. At that time, the second
respondent herein, who was driving the Government bus bearing
Regn. No.TN-38-N-1178 from west to east direction, in a rash and
negligent manner, hit against the first respondent herein /
claimant thereby causing grievous injuries to the claimant all
over the body. Immediately, the first respondent herein /
claimant was taken to ARS Hospital, Tirupur. He was admitted in

the hospital as inpatient from 26.12.2015 to 09.1.2016. The first respondent herein / claimant sustained poster dislocation at hip joint unit, displaced fracture of posterior wall at acetabulum right, CLW over right foot and right middle finger and 5th metacarpal fracture.

3. At the time of accident, the first respondent herein / claimant was aged 25 years and was working as a Power Table Operator in PGN Baniyan Company earning a sum of Rs.20,000/- per month. He is permanently disabled and cannot do any work throughout his life. Further, he cannot attend to his personal affairs and he requires the assistance of some one. The second respondent herein is the driver of the Government town bus and the appellant is the owner of the same and they are jointly, severally and vicariously liable to pay compensation. Hence, the first respondent herein - claimant filed a claim petition before the Tribunal claiming a compensation of Rs.30 lakhs together with interest and costs.

4. The claim petition was contested by the Transport Corporation by filing a counter on the ground that the owner and the insurer of the motor vehicle involved were not impleaded as parties to the claim petition. According to the appellant / Transport Corporation, the motor vehicle involved in the accident was not covered by any Insurance at the time of accident. In the counter, the appellant / Transport Corporation further stated that the claim petition was liable to be dismissed for non-joinder of necessary and proper parties; that on the date of accident, the driver of the town bus involved drove the vehicle carefully by observing traffic rules and regulations, that the first respondent herein / claimant came from the opposite side in a rash and negligent manner at uncontrollable speed and dashed against the front side of the bus belonging to the appellant / Transport Corporation; that the first respondent herein / claimant was responsible for the accident, that the name of the second respondent herein was wrongly impleaded in the First Information Report and that the age, occupation and income of the first respondent / claimant were denied. Ultimately, the appellant / Transport Corporation sought to dismiss the claim petition with costs.

5. The Tribunal framed three points for determination viz. (i) who was rash and negligent for causing the accident ? (ii) whether the first respondent herein / claimant was entitled to compensation ? and (iii) if so, to what extent ?

6. Before the Tribunal, the first respondent herein / claimant examined himself as PW1 apart from examining one Mr.Muthusamy as PW2, who was working with him and one Dr.P.Senthilkumar as PW3 and marked Ex.P1 - the First

Information Report, Ex.P2 - the Final Report, Ex.P3 - the Observation Mahazar, Ex.P4 - Rough Sketch, Ex.P5 - the Motor Vehicle Inspector's Report pertaining to the bus belonging to the appellant - Transport Corporation, Ex.P6 - wound certificate, Ex.P7 - discharge summary, Ex.P8 - medical bills, Ex.P9 - aadhar card pertaining to the first respondent herein - claimant, Ex.P10 - a copy of first page of the bank passbook pertaining to the first respondent herein - claimant, Ex.P12 - disability certificate, Ex.P.13 - X ray and Ex.P14 - MRI scan. The Transport Corporation examined the driver as RW1. However, no document was marked on their side.

7. The Tribunal came to the conclusion that though the Transport Corporation examined the driver of the Government town bus namely the second respondent herein, they did not produce or mark any documents to prove that the first respondent herein - claimant was responsible for causing the accident and that it was proved through Ex.P1 - the First Information Report and Ex.P2 - the Final Report that the second respondent herein - RW1 was responsible for causing the accident. The Tribunal further held that the appellant - Transport Corporation, as the owner of the bus, is bound to pay compensation to the first respondent herein - claimant. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal in respect of negligence and liability.

8. The Tribunal has examined the evidence of PW3 - the Doctor, who fixed the permanent disability of the claimant at 52.6% as well as Ex.P12 to Ex.P14. The Tribunal also examined the evidence of PW2 and disbelieved his version that the first respondent herein - claimant was earning a sum of Rs.20,000/-, as he did not produce any documentary evidence. Instead, the Tribunal fixed the monthly income of the first respondent herein - claimant at Rs.8,000/- and also taken 40% of the said sum of Rs.8,000/- towards loss of additional income and arrived at the loss of income per month at Rs.11,200/- Thereafter the Tribunal has adopted the multiplier of 18 and arrived at the total loss of income for 50% disability at Rs.12,09,600/-. The Tribunal has also awarded a sum of Rs.25,000/- towards pain and suffering, Rs.10,000/- towards mental agony, Rs.5,000/- towards salary for attender, Rs.5,000/- towards nutrition, Rs.2,000/- towards transportation charges and Rs.1,18,946/- towards medical expenses. In total, the Tribunal has awarded a sum of Rs.13,75,000/- together with interest at the rate of 7.5% per annum and costs. Aggrieved by such award, the Transport Corporation is before this Court.

9. The learned counsel for the appellant has contended that the Tribunal failed to note that there was no evidence available on record as to how the disability sustained by the first

respondent herein - claimant would affect his earning capacity; that the Tribunal ought not to have adopted multiplier method to calculate the loss of earning capacity; that the Tribunal has erred in fixing the permanent disability at 50%; and that the Tribunal has erred in fixing the monthly income of the first respondent herein - claimant at Rs.11,200/-.

10. Per contra, the learned counsel for the first respondent herein - claimant reiterated the contentions raised in the claim petition and sought to sustain the award.

11. This Court heard the learned counsel for the appellant / Transport Corporation and the learned counsel for the first respondent herein / claimant and perused the materials available on record.

12. The Tribunal has arrived at the total compensation under various heads based upon the evidence and documents produced by the claimant. To controvert the same, nothing has been elicited or produced by the appellant herein. Hence, the findings on quantum by the Tribunal have to be confirmed and they are confirmed as such.

13. In the light of the above, the above Civil Miscellaneous Appeal is dismissed by confirming the award passed by the Tribunal. The appellant - Transport Corporation is directed to deposit the entire compensation amount together with interest and costs as awarded by the Tribunal less the amount already deposited. On such deposit, the Tribunal shall transfer the entire amount to the Savings Bank Account of the claimant through RTGS, within one week thereafter. Consequently, the connected CMP is also dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

srk

To

The Motor Accidents Claims Tribunal (Principal Subordinate Court), Tirupur.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.K.J.Sivakumar , Advocate SR.No. 94397

+1cc to Mr.K.Myilsamy , Advocate SR.No. 94131

CMA.No.2202 of 2019 &
CMP.No.9264 of 2019

A.SK(05/03/2020)