

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2615 of 2015
and M.P.No.1 of 2015

State Transport Corporation,
Villupuram Division Limited,
Represented by its Managing Director,
Kancheepuram ..Appellant / Respondent

Vs.

E.Ganapathy ..Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 17.06.2014 made in M.C.O.P.No.3502 of 2011, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For appellant : Mr.K.J.Sivakumar

For Respondent : Mr.B.S.Padmanabhan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation, challenging the award dated 17.06.2014 made in M.C.O.P.No.3502 of 2011, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-Transport Corporation is the respondent in M.C.O.P.No.3502 of 2011, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. The respondent filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.06.2011.

3.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 appellant-Transport Corporation and directed the appellant to pay a sum of Rs.10,41,000/- as compensation to the respondent.

4.Challenging the said award dated 17.06.2014 made in M.C.O.P.No.3502 of 2011 granting compensation to the respondent, the appellant-Transport Corporation has come out with the present appeal.

5.The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal failed to see that the accident did not occur due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation, but only due to rash and negligent driving by the lorry which came in the opposite direction and prayed for reducing the award amount. The Tribunal without there being any evidence with regard to avocation and income earned by the respondent, erroneously fixed the income at Rs.6,500/- per month and granted compensation for loss of income for a period of 12 months. The Tribunal erred in awarding compensation for disability and also for loss of earning capacity by applying the multiplier method. The amounts awarded by the Tribunal under different heads are excessive.

6.Per contra, the learned counsel appearing for the respondent submitted that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation and FIR was registered only against the driver of the bus. The appellant-Transport Corporation bus has not let in any evidence to substantiate their case that the accident occurred only due to negligence on the part of the respondent. The Tribunal considering all the materials on record and evidence let in by the respondent, has rightly held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant. The respondent has taken treatment as inpatient from 20.06.2011 to 03.08.2011. The Tribunal considering the nature of injuries and disability suffered by the respondent, awarded compensation, which are not excessive and prayed for dismissal of the appeal.

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

8.From the materials on record, it is seen that FIR was registered against the driver of the bus stating that due to negligence of the driver the accident occurred. The appellant

has not filed any objection before the police or higher authority to show that the contents of FIR is not correct. The appellant also has not produced the report of the Motor Vehicle Inspector. The appellant did not let in contra evidence to disprove the evidence of the respondent-injured eye witness. The Tribunal considering the evidence of 1st respondent as P.W.1 and FIR marked as Ex.P1, held that the driver of the appellant was responsible for the accident. There is no reason to interfere with the said finding warranting interference by this Court.

9.As far as the quantum of compensation is concerned, from the materials on record, it is seen that for the injuries and disability suffered by the respondent, the Tribunal has awarded compensation for loss of income for 12 months at the rate of Rs.6,500/- per month and granted compensation for 60% disability at the rate of Rs.2,000/- per percentage and also granted compensation under the head of loss of earning capacity by applying the multiplier method. The amounts awarded by the Tribunal under the heads of loss of income and loss of earning capacity is excessive. The respondent has not let in any evidence before the Tribunal to show that he was totally disabled and he suffered functional disability. The Tribunal considering the evidence of P.W.2-Doctor, at one place has held that the percentage of disability assessed by P.W.2-Doctor is on higher side and awarded the compensation by percentage basis. Considering the evidence on record in its entirety, the amounts awarded by the Tribunal for loss of income for 12 months is reduced to 6 months. Hence, a sum of Rs.39,000/- [Rs.6,500/- x 6] is granted towards loss of income. The percentage of disability certified by the Doctor is reduced to 50% and a sum of Rs.1,00,000/- [50% x Rs.2,000/-] is granted towards disability. In the absence of any evidence to prove that the respondent suffered functional disability and could not do any work, the percentage of disability for the whole body is reduced to 25% and hence, the loss of earning capacity is modified to Rs.3,31,500/- [Rs.6,500/- x 12 x 17 x 25%]. The amounts granted by the Tribunal under the head of extra nourishment and transportation is set aside and a sum of Rs.30,000/- is granted towards extra nourishment and a sum of Rs.5,000/- is granted towards transportation. The amounts granted under the head of damages to clothes and articles and pain and suffering are excessive. Hence, the same are reduced to Rs.1,000/- and Rs.30,000/- respectively. The amounts granted by the Tribunal under all other heads are just and reasonable and they 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.	Loss of income	78,000/-	39,000/-	reduced
2.	Extra nourishment, transportation	50,000/-	-	Set aside
3.	Extra nourishment	-	30,000/-	granted
4.	Transportation	-	5,000/-	granted
5.	Damages to clothes	2,000/-	1,000/-	reduced
6.	Medical expenses	5,000/-	5,000/-	confirmed
7.	Attender charges	10,000/-	10,000/-	confirmed
8.	Pain and suffering	50,000/-	30,000/-	reduced
9.	Disability	1,20,000/-	1,00,000/-	reduced
10.	Disfigurement	13,000/-	13,000/-	confirmed
11.	Loss of future earning capacity	6,63,000/-	3,31,500/-	reduced
12.	Loss of amenities	50,000/-	50,000/-	confirmed
	Total	10,41,000/-	6,14,500/-	reduced by Rs.4,26,500/-

10. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.10,41,000/- is reduced to Rs.6,14,500/- along with interest and costs. The appellant-Transport Corporation is directed to deposit the modified award amount 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.3502 of 2011. On such deposit, the respondent/claimant is permitted to withdraw the modified award

amount, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

gsa

To

The V Judge,
Court of Small Causes,
The Motor Accident Claims Tribunal,
Chennai.

+1 cc to Mr.K.J.Sivakumar, Advocate, S.R.No.6681

+1 cc to Mr.B.S.Padmanabhan, Advocate, S.R.No.7099

C.M.A.No.2615 of 2015
and M.P.No.1 of 2015

GJ-II(CO)
SSM(02/07/2019)