

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2019

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2803 of 2013

Sireesha
D/o.Usha Mohan ... Appellant/Petitioner

- Vs -

The Managing Director,
Metropolitan Transport Corporation,
Pallavan House,
Anna Salai, Chennai-2. ... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 30.04.2013 made in M.C.O.P.No.4118 of 2011 on the file of the Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai.

For Appellant : Mr.Varadha Kamaraj

For Respondent : Mr.S.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant, who was the claimant before the Court below aggrieved by the Judgment and decree dated 30.04.2013 made in M.C.O.P.No.4118 of 2011 by the Motor Accident Claims Tribunal (VI Small Causes Court), Chennai raising the following ground:-

Mainly, the appellant has questioned the amount awarded by the Court below stating that the amount awarded on a wrong submission and ought to have awarded appropriate by for the injury sustained by her.

2. The case of the appellant is that on 18.05.2011 at about 13.15 hours, she was riding her scooter bearing Registration No.TN-10-Z-8091 at EVR Road near Seetha Kingston School from west to east. At that time, a MTC

bus bearing Registration No.TN-01-N-5144 was proceeding in the same direction from west to east in a high speed in rash and negligent manner and dashed against her from back. Due to the said act of the bus driver, the claimant sustained grievous injuries and she was admitted in the hospital. The wound certificate would show that the appellant sustained fracture on the right elbow joint oecrranon fracture, which was surgically fixed with long screws and tension band vide wire vide union with implants in place. She was admitted for six days in Rakshith Hospital, Chennai and from discharge summary, it is seen that she has sustained abrasion in the dorsum foot of the right leg and tenderness over right elbow. Due to the injury sustained by her, she had to undergo a surgery to fix screws in the right hand and hence, she claimed a sum of Rs.6,00,000/- as compensation.

3. The respondent filed a counter denying all the averments of the claim petition and submitted that the driver had drive the MTC bus with due care and caution, observing traffic rules and regulations and he was not rash and negligent at the time of accident. The respondent further submitted that he denies the said alleged accident and no such accident was happened with MTC bus at that time of 13.15 hours on 18.05.2011. A false statement and false FIR has been prepared by the police authority, since in the A.M shift, respondent bus bearing Fleet No.ANI960 completed its trip at 12.55.p.m in the Anna Nagar bus terminus and parked with in the depot to fill up the diesel. Hence, it is stated that the said vehicle has not involved in the said accident. The same bus had started its trip at Anna Nagar after filling the diesel at about almost 13.10 hours and started its journey at 13.20 hours from the Anna Nagar bus terminus. If at all the accident happened, the respondent bus might have reached the accident place at round about 15.00 hours only, since the respondent-bus usually takes about half an hour to reach the accident place from the starting point. Hence, the P.M shift bus bearing the same Fleet No.ANI 960 also not involved with any accident. He also submitted that no complaint was received from the public regarding the same. As the party injured not taken treatment in the Government Hospital, which is near to the accident place, but, she had taken medical treatment at Apollo First MED Hospital (Pvt.Hospital), which would show that no such accident has taken place. On scrutiny of the medical records would prove that registration number of the bus was not mentioned in the hospital records, besides the time of accident was tapered by someone of the Hospital authority through over writing and Route number of the bus was also

not mentioned. Hence, this record is not valid document on the date of accident and it might have been obtained by the petitioner by spending some money later on. The police has also registered an FIR with false allegations.

4. On the side of the appellant/claimant, documents P1 to P8 were marked and two persons were examined and for the respondent's side, one witness, who is the driver of the vehicle has been examined. The Court below, after considering the materials on record, had found that the accident has happened and the same has been proved and awarded a sum of Rs.3,47,562/- as compensation, by judgment dated 30.04.2013. Aggrieved by the said judgment, the claimant preferred the present appeal seeking enhancement of compensation.

5. On perusal of the evidence before this Court and the materials available, it is found that on 18.05.2011, as per Ex.P3/Accident Register, the appellant had sustained head injuries, abrasion in the dorsum foot of right leg and tenderness over right elbow. Ex.P4/Discharge summary issued by Rakshith Hospital, Chennai, wherein she was admitted on 22.05.2011 and discharged on 27.05.2011 for a period of 6 days, would show that she sustained right olecranon fracture and found that she had taken treatment in the said hospital as an inpatient and implant has been done in the right elbow. PW-2/Dr.N.Saichandran deposed that on the basis of discharge summary, he assessed the disability and found it to be 50% partial permanent disability and he also deposed that due to the surgery, the right hand grip was reduced and acting use causes restriction and hence he assessed the disability at 50% as permanent and partial disability as per Ex.P8. The injured person, as a woman, who was studying in a college, would definitely have used the right hand for writing her exams and this will definitely prevent her from writing in a speedy manner in doing her exams and also her skills using right hand has been restricted. As a lady, she supposed to do the cooking work when she gets married in future and do other household work. Due to the said accident, it will definitely cause a difficulty and the same has to be looked into by this Court. A plate has been fixed in her right hand due to the said fixing, right hand movements have been restricted and the Doctor has also rightly issued the disability certificate fixing the permanent partial disability at 50%. The respondent has not established that the said vehicle was not involved in the accident even though they have pleaded so. No documentary evidence have been produced before this Court to prove that the said vehicle has not caused any

accident.

6. According to the above said facts, this Court is of the view that in the absence of any evidence to show that the vehicle has not involved in any accident, this Court is inclined to fix liability on the MTC bus. The Court below has awarded a sum of Rs.3,47,500/- under the following heads:-

Heads	Amount (Rs.)
Transportation	5,000
Extra Nourishment	5,000
Medical Expenses	1,11,062
Attender Charges	5,000
Loss of Amenities	40,000
Pain and Suffering	50,000
Loss of Marital Status	30,000
Disability of 50% at the rate of Rs.2000/- per percentage	1,00,000
Damage to Clothes	15,00
Total	3,47,562

The same is rounded to Rs.3,47,500/-.

As per the prevailing rate per percentage of disability in the year 2001, this Court is inclined to increase the same from Rs.2000/- to Rs.3000/- and reduced the amount of Rs.50,000/- to Rs.40,000/- for pain and suffering. Accordingly, the amount awarded under the head of Disability of 50% at the rate of Rs.2,000/- per percentage is modified to Rs.3,000/- per percentage, which comes to Rs.1,50,000/- [Rs.3000 X 50%] and the amount awarded under the head of pain and suffering is reduced to Rs.40,000/-. As to the other heads, this Court confirms the compensation amount granted by the Tribunal. The final amount of compensation now determined is tabulated below:-

Heads	Amount (Rs.)
Transportation	5,000
Extra Nourishment	5,000
Medical Expenses	1,11,062
Attender Charges	5,000
Loss of Amenities	40,000

Heads	Amount (Rs.)
Pain and Suffering	40,000
Loss of Marital Status	30,000
Disability of 50% at the rate of Rs.3000/- per percentage	1,50,000
Damage to Clothes	15,00
Total	3,87,562

The same is rounded to Rs.3,87,500/-.

7. This Civil Miscellaneous Appeal is partly allowed. The respondent is directed to deposit Rs.3,87,500/-, less if any amount already deposited, with interest at 7.5% per annum, within eight weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw same forthwith.

8. It is reported that the Transportation Corporation has filed an appeal before this Court against the award passed against the Judgment and Decree dated 30.04.2013 made in M.C.O.P.No.4118 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai and the same is only in SR stage. This Court is not having jurisdiction, this Court proceeded with the above appeal, since this Civil Miscellaneous Appeal is of the year 2013.

Sd/-
Assistant Registrar

//True Copy// सतयमेव जयते
Sub Assistant Registrar

KMI

To

1. The Motor Accident Claims Tribunal,
VI Small Causes Court,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

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+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.101701
+1cc to Mr.S.Sivakumar, Advocate, S.R.No.102296

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RJI (CO)
CB(21/08/2020)



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