

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2892 of 2019
and C.M.P.No.15284 of 2019

The Managing Director,
KSRTC Ltd., K.H.Road,
Bengaluru-27. Appellant/Respondent

vs.

Mr.S.Muralidhar ReddyRespondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.08.2018 passed in M.C.O.P.No.47 of 2017 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge) at Hosur.

For Appellant : Mr.T.Thiyagarajan

For Respondent : Mr.R.Jayaprakash

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

The instant appeal has been filed by the Appellant Transport Corporation challenging the judgment and decree dated 02.08.2018, passed by the Motor Accidents Claims Tribunal, (Additional District Judge) at Hosur in M.C.O.P.No.47 of 2017.

Brief facts leading to the filing of the instant appeal:

2.The respondent sustained grievous injuries on 18.02.2017 as a result of an accident caused by a KSRTC bus bearing Registration No.KA-42-F-0316 owned by the Appellant which was coming in the opposite direction to that of the respondent's motor cycle bearing Registration No.KA-08-U-2315, which was driven by the respondent.

3. According to the respondent, the bus which came in the opposite direction dashed against the respondent's motor cycle and the respondent had fallen down from the motor cycle and sustained grievous injuries. The respondent sustained the following grievous injuries as a result of the accident caused by the KSRTC bus owned by the Appellant:

- (a) Right fore arm and hand lacerated wound
- (b) Right leg type III B open tibia fracture with bone loss
- (c) Right medial malleolus fracture
- (d) Right femur shaft comminuted fracture
- (e) Mandible - Fracture right angle and left parasymphysis
- (f) Right hand extensor tendon of little finger cut with scraping of dorsal cortex of 5th metacarpal shaft.

4. It is also the case of the respondent that he underwent surgeries and was also hospitalized as a result of the injuries sustained by him due to the accident.

5. The respondent preferred a claim before the Motor Accidents Claims Tribunal, (Additional District Judge) at Hosur in M.C.O.P.No.47 of 2017, seeking a compensation of Rs.30,00,000/- for the injuries sustained by him against the Appellant Transport Corporation.

6. By an award dated 02.08.2018, the Tribunal after holding that the accident had happened only due to the rash and negligent driving by the driver of the KSRTC bus, directed the Appellant to pay the respondent, a sum of Rs.26,11,657/- as compensation together with interest at the rate of the 7.5% per annum from the date of claim till the date of realization excluding the default period if any.

7. Aggrieved by the award dated 02.08.2018, passed by the Tribunal in M.C.O.P.No.47 of 2017, the instant appeal has been filed by the Appellant Transport Corporation.

8. Heard T.Thiyagarajan, learned counsel for the Appellant and Mr.R.Jayaprakash, learned counsel for the first respondent.

Discussion:

9. The Appellant Transport Corporation has filed this appeal challenging the adverse finding of negligence against the driver of the KSRTC bus and they have also challenged the quantum of assessment of compensation by the Tribunal.

10. Before the Tribunal, the respondent filed 13 documents and they were marked as Exs.P1 to P13. The respondent/claimant was himself examined as PW1. On the side of the Appellant, the driver of the bus Rudrappa was examined as RW1. MVI Reports of

KSRTC bus bearing Registration No.KA-42-F-0316 as well as the motor cycle bearing Registration No.KA-08-2315 was also marked as Exs.R1 and R2 respectively.

11.FIR (Ex.P1) was registered only against the driver of the KSRTC bus. The bus was coming from the opposite direction to that of the two wheeler in which the respondent was riding. MVI Reports Exs.R1 and R2 reveals that both the vehicles were damaged on their right side. The two wheeler being small when compared to the bus, it is not possible for the two wheeler to have dashed against the right side of the bus which was coming in the opposite direction. No sketch submitted by the Police as to how the accident happened has also not been produced by the Appellant Transport Corporation to substantiate their claim that only due to the rash and negligent driving of the two wheeler in the middle of the road, the accident had happened.

12.The Tribunal has considered the MVI Reports, namely, Exs.R1 and R2 as well as the oral evidence of PW1 which has not been disproved by the Appellant and has come to the right conclusion that only due to the rash and negligent driving by the driver of the KSRTC bus, the accident had happened. We do not find any infirmity in the said finding of the Tribunal.

13.As a result of the accident, the respondent sustained the following injuries:

- (a)Right fore arm and hand lacerated wound
- (b)Right leg type III B open tibia fracture with bone loss
- (c)Right medial malleolus fracture
- (d)Right femur shaft comminuted fracture
- (e)Mandible - Fracture right angle and left parasymphysis
- (f)Right hand extensor tendon of little finger cut with scraping of dorsal cortex of 5th metacarpal shaft.

14.Before the Tribunal to prove his injuries, the respondent has filed Ex.P2(Wound Certificate), Ex.P3 (Discharge Summary) issued by Sparsh Hospital, Bangalore, Ex.P11 (Discharge Summary) issued by Sparsh Hospital, Bangalore, which reveals that the final diagnosis was fracture of right tibia with external fixator in situ and bone loss, uniting fracture right femur with IMIL nail in-situ., Ex.P12 Discharge Summary issued by Sparsh Hospital, Bangalore which reveals that the final diagnosis was healing right tibia fracture with ilizarov fixation.

15.Considering the nature of the injuries sustained by the respondent, the District Medical Board, Krishnagiri examined the respondent and issued Disability Certificate Ex.P13 which reveals that the respondent sustained 65% partial permanent disability as a result of the accident. The Tribunal has

rightly assessed the disability of the respondent at 65% based on the disability certificate Ex.P13.

16.The age of the respondent is 22 years as seen from the discharge summary issued by the hospital Ex.P11. No contra evidence has been produced by the Appellant to disprove the age of the respondent. Therefore, the Tribunal has rightly taken the age found in the discharge summary Ex.P11 as his correct age. Even though, the respondent had claimed that he was running a provision store and had claimed that he was earning monthly income of Rs.20,000/- at the time of the accident, the Tribunal has assessed the notional monthly income of the respondent only at Rs.9,000/- per month since he did not file any documents to prove his claimed monthly income. The injuries sustained by the respondent are indeed grievous in nature drastically reducing his mobility.

17.As a sole proprietor of the provision store, the respondent has to buy goods from the wholesale market and sell the same in his retail shop for which he has to move from place to place. In view of the injuries, the respondent's mobility would certainly have been curtailed. The Tribunal has rightly held that due to the injuries sustained by him, the respondent would not be able to do his regular daily work as before and his earning capacity would have been considerably reduced. The Tribunal has rightly applied the multiplier method while assessing the compensation payable to the respondent. The Tribunal has applied the correct multiplier of 18 considering the age of the respondent at the time of the respondent was 22 years.

18.Considering the nature of the injuries and the age of the respondent, the Tribunal has rightly added 40% towards loss of future prospects. The reimbursement of the medical expenses of Rs.6,62,617/- awarded by the Tribunal is supported by medical bills, namely, Ex.P7 and P10 and therefore, the Tribunal has rightly awarded the same to the respondent. The compensation of Rs.50,000/- awarded towards future medical expenses, Rs.10,000/- towards transportation charges, Rs.20,000/- towards nutrition charges, Rs.20,000/- towards attender charges, Rs.50,000/- towards pain and suffering and Rs.30,000/- towards discomfort, frustration and loss of social enjoyment, Rs.5,05,440/- towards loss of future prospects, in our considered view is a just compensation.

19.For the forgoing reasons, we are of the considered view that there is no merit in this appeal.

20.In the result, the appeal is dismissed and the Appellant Transport Corporation is directed to deposit the entire award amount as per the award of the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.47 of 2017 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount through RTGS within a period of four weeks thereafter. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

To

- 1.The Motor Accidents Claims Tribunal,
(Additional District Judge) at Hosur.
- 2.The Section Officer,
VR Section,
Madras High Court.

+lcc to Mr.T.Thiyagarajan, Advocate Sr.77065
+lcc to Mr.R.Jayaprakash, Advocate Sr.77324

C.M.A.No.2892 of 2019

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