

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 781 OF 2012

and

M.P.No.1 of 2012

Managing Director,
Tamil Nadu State Transport
Corporation,
No.12, Ramkrishna Road,
Salem - 7

... Appellant /Respondent

Versus

1.S.Senthil Kumar

... Respondent/Petitioner

Prayer : This Civil Miscellaneous Appeal is filed Under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.06.2011, made in MCOP.587 of 2008 on the file of Motor Vehicles Accidents Claims Tribunal, Sub Judge, Rasipuram.

For Appellant : Mr.V. Ramesh

For Respondent : Ma.Pa. Thangavel

JUDGMENT

The appellant has come forward with this appeal against the award dated 07.06.2011, on the file of Motor Vehicles Accidents Claims Tribunal, Sub Judge, Rasipuram.

2. The case of the respondent is that on 09.09.2006 at 09:15 hours the claimant was travelling as a passenger in the appellant/Transport Corporation Bus bearing Registration No. TN-27-N-0988 and when the bus reached Ammal Koil bus stand, the respondent was trying to alight from the bus, but unfortunately, the driver of the bus started the bus and in the impact, he fell down and sustained grievous injuries. Hence, he filed M.C.O.P.No.587 of 2008, on the file of Motor Vehicles Accident Claims Tribunal, Sub Judge, Rasipuram seeking compensation for a sum of Rs.5,00,000/- The Tribunal, on a consideration of oral and documentary evidence, has awarded a sum of Rs.2,90,800/-

payable with interest at the rate of 7.5% per annum.

3. The learned counsel for the appellant/Transport Corporation contends that the vehicle involved in the accident was an ordinary Town Bus and it will stand in each stopping and the conductor of the bus takes proper care and blow the whistle only after passengers get down from the bus. But, the respondent herein alighted from the bus before the bus stops. Hence, it is due to the negligence act of the claimant himself, the accident has happened and driver of the bus was not responsible for the accident. He further contended that the claim of the respondent about the age, avocation and income are false and the claim of the respondent is exorbitant. Hence, he prays to set aside the award passed in M.C.O.P.No.587 of 2008, on the file of Motor Vehicles Accident Claims Tribunal, in which, the liability was fixed to them.

4. The learned counsel for the respondent/claimant could contend that the Tribunal has failed to take into consideration the contents of Ex.P.2 which clearly mentioned about the cause of injury, the nature of injury and the relevant particulars. He further contended that the evidence of PW-1 was also not considered by the Tribunal and the Tribunal awarded very meagre amount inspite of the fact that the petitioner has suffered grievous injuries including fracture. Hence, the respondent seeks to enhance the award amount passed by the Tribunal.

5. Heard both sides and perused the materials available on record.

6. Before the Tribunal, the claimant examined himself as PW-1 and Doctor was examined as PW-2 and also produced documents Ex.P1 to Ex.P.10. On the side of the respondents, conductor of the bus was examined as R.W.1 and no documentary evidence was produced.

7. The Tribunal, on the basis of available evidence on record, found that the negligence is on the part of the driver of the bus and passed an award for a sum of Rs.2,90,800/- as compensation to the claimant under the following heads.

S.No	Heads	Amount granted by the Tribunal
1	Expenses for treatment	Rs.3,000/-
2	Disability	Rs.2,26,800/-
3	Transport charges	Rs.1,000/-
4	Medical expenses	Rs.45,000/-

S.No	Heads	Amount granted by the Tribunal
7	Pain and suffering	Rs.15,000/-
	Total	Rs.2,90,800/-

8. Challenging the said award amount passed by the Tribunal, the Appellant/Transport Corporation has come forward with the present appeal.

9. It is seen from the evidence of P.W.1/claimant coupled with the documentary evidence that before the claimant could alight from the bus in a hurried manner and in a rash and negligent manner, the driver of the Transport Corporation bus has took the bus and as a result of which, the claimant lost his balance, fell down from the bus on the road and sustained injury as stated above and hence, in view of the presence of the positive evidence of P.W.1 coupled with the documentary evidence and in the absence of any contra evidence to the contrary, the Tribunal is quite right in holding that the accident has taken place due to the rash and negligent driving of the driver of the Transport Corporation bus and hence, this point is answered accordingly.

10. As per the evidence of P.W.2/Dr.Sampathkumar, it is seen that he had issued Ex.P.9-Disability Certificate to the extent that the claim petitioner has suffered 42% of partial permanent disability. However, taking into consideration the nature of the injury and the impact of the injury in leading a normal life, the Tribunal has rightly come to the conclusion and fixed the disability suffered by the first respondent/claim petitioner at 35%. This Court is of the considered view that taking note of the injuries sustained by the claimant as stated in Ex.P.9-Permanent Disability Certificate and also the evidence of P.W.1 that he cannot carry out his business and employment as before, adoption of multiplier method is inconsonance with the criteria fixed by the Hon'ble Apex Court in assessing the functional disability as reported in the case of Rajkumar Vs. Ajaykumar & another [2010 (2) TN MAC 581 SC]. Accordingly, the notional income of Rs.3,000/- fixed by the Tribunal cannot be termed to be excessive and furthermore, proper multiplier of 18 also has been adopted and hence, the quantum of compensation awarded by the Tribunal by adopting multiplier method cannot be found fault with and in fact, it appears to be just and reasonable having satisfying the criteria of Rajkumar's case (cited supra) in respect of functional disability and hence, the quantum of compensation awarded by the Tribunal cannot be said to be excessive and hence, the appeal is liable to be dismissed.

11. In the result,

(i) the Civil Miscellaneous Appeal is dismissed. The Judgment and Decree passed by the Motor Accident Claims Tribunal, Sub Judge, Rasipuram in M.C.O.P.No.587 of 2008 is hereby confirmed.

(ii) the Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with the interest at the rate of 7.5% within a period of four weeks from the date of receipt of a copy of this Judgment.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iv) On such deposit, the claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(v) There will be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Subordinate Court, Rasipuram.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.P.Thangavel, Advocate, S.R.No. 27879

C.M.A No.781 of 2012

M.P.No.1 of 2012

VBA(CO)
GN(11/11/2019)