

In the High Court of Judicature at Madras

Dated : 21.11.2019

Coram :

The Honourable Mr.Justice R.MAHADEVAN

Civil Miscellaneous Appeal No.3046 of 2017

Gopi

...Appellant/Petitioner

Vs

1.The Managing Director, Tamil Nadu
State Transport Corporation Ltd.,
Villupuram Division, Kancheepuram
Region, Kanchipuram District-631501.

2.The Managing Director, Tamil Nadu
State Transport Corporation Ltd.,
Salamedu, Villupuram District. ...Respondents/Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988
against the award and decree dated 10.11.2016 made in
MCOP.No.4228 of 2013 on the file of the Motor Accidents Claims
Tribunal (IV Judge, Court of Small Causes), Chennai.

For Appellant : Ms.M.Malar
For Respondent-2 : Mr.K.J.Sivakumar
R1 : Exparte

JUDGMENT

The claimant is before this Court, not satisfied with the
award passed by the Motor Accidents Claims Tribunal (IV Judge,
Small Causes Court), Chennai, in a motor accident causing
grievous injuries to the claimant - appellant, aged 41 years.

2. The accident took place on 25.5.2013 at 4.30 AM near
Acharapakkam Bridge. On the date of accident, the appellant -
claimant was travelling as a passenger in the bus bearing
Regn.No.TN-21-N-1210 belonging to the first respondent herein.
At that time, the bus, in which, the appellant was travelling,
was stopped at the bus stop. However, the bus bearing
Regn.No.TN-32-N-3448 belonging to the second respondent herein,
driven by its driver in a rash and negligent manner, dashed
against the bus on the backside, on account of which, the
appellant - claimant sustained injuries in the left cheek, left
side of the neck, deep injuries in both the chin, fracture in

the scalp parietal region and multiple injuries all over his body.

3. At the time of accident, the appellant - claimant was working as a driver, earning a sum of Rs.15,000/- per month. It appears that even on the date of filing the claim petition i.e 14.6.2013, the appellant - claimant was taking treatment as an inpatient and also as outpatient for quite some time. Therefore, seeking a compensation of Rs.6,00,000/- together with interest and costs from both the respondents herein, the appellant - claimant filed the petition before the Tribunal.

4. Before the Tribunal, the first respondent was set ex parte. The second respondent resisted the claim petition by filing a counter, in which, they denied the aspect that the accident took place due to the rash and negligent driving by the driver of the bus belonging to them. According to them, the driver of the bus belonging to them drove the vehicle with due care and caution fully observing the traffic rules, that the appellant - claimant had to prove the age, occupation, monthly income, nature of injuries sustained by the appellant - claimant, period of treatment, medical expenditure and percentage of disability suffered. Ultimately, the second respondent sought to dismiss the claim petition with costs.

5. The Tribunal framed four points for consideration namely :

- (i) whether the accident was due to the rash and negligent driving by both the drivers of the respective buses ?
- (ii) Whether the appellant - claimant was entitled to any compensation?
- (iii) What was the quantum of compensation the appellant - claimant entitled to ? and
- (iv) From whom, the appellant - claimant was entitled for the compensation ?

6. Before the Tribunal, the appellant - claimant examined himself as PW1, apart from examining one Dr.J.R.R.Thiagarajan as PW2, who gave the Disability Certificate and marked Ex.P1 - copy of the First Information Report, Ex.P2 - copy of the Accident Register, Ex.P3 - Discharge Summary, Ex.P4 - Diet Pass issued by the Government Hospital, Ex.P5 - Discharge Summary, Ex.P6 - Lab Report, Ex.P7 - Prescription, Ex.P8 - Medical Bills, Ex.P9 - Driving Licence of the appellant - claimant, Ex.P10 - Disability Certificate issued by PW2 and Ex.P.11 - X-ray. However, the second respondent did not examine any witness nor marked any documents. Ultimately, the Tribunal has awarded a sum of Rs.1,02,500/- together with interest at the rate of 7.5% per annum (except for Rs.2,000/- towards future medical expenses)

from the date of claim petition. Seeking enhancement of the compensation, the appellant - claimant is before this Court.

7. The learned counsel for the appellant - claimant has contended that the Tribunal failed to consider the nature of injuries sustained by the appellant - claimant; that the appellant - claimant sustained injuries all over his body and continued to take treatment in private clinics also; that though PW2 - the Doctor assessed the disability at 50%, the Tribunal reduced it to 20%; and that the amounts awarded under various heads are on the lower side.

8. The learned counsel for the second respondent has reiterated the contentions raised in the counter filed by them before the Tribunal and sought to sustain the award.

9. This Court has heard the learned counsel for the appellant and the learned counsel for R-2. This Court has also carefully considered the contentions raised on either side and perused the records.

10. With regard to negligence, the Tribunal, after considering Ex.P1 - the First Information Report, found that though the second respondent denied the manner of accident as well as the nature of injuries sustained by the appellant - claimant, Ex.P1 would substantiate the case of the appellant. The Tribunal also found that though the second respondent has stated that the driver of the bus belonging to the second respondent drove the vehicle with due care and caution, they did not let in any evidence to prove the same. The Tribunal came to the conclusion that the accident took place due to the rash and negligent driving by the driver of the bus belonging to the second respondent. This Court does not find any illegality or infirmity in the award passed by the Tribunal with regard to negligence aspect and hence the same is confirmed as such.

11. With regard to quantum, it is seen that the appellant - claimant examined the doctor, who gave the Disability Certificate, as PW2. The Doctor assessed the disability percentage at 50%. When the doctor, who issued the Disability Certificate, himself assessed the disability at 50%, it is not known as to how the Tribunal reduced the percentage of disability to 20%, without any reason therefor. The doctor opined that the injuries were partial and permanent in nature. It is crystal clear that only because of the accident, the appellant - claimant sustained injuries and that he was taking treatment for a considerable period. Hence, the disability assessed by PW2 cannot be brushed aside unless there is any contrary evidence. The appellant - claimant was working as a driver. One can imagine the situation, in which, the appellant -

claimant is placed. No man of ordinary prudence would award such a feeble amount, as the permanent disability is fixed at 50%. Accordingly, a sum of Rs.1,50,000/- (Rs.3000/- per percentage of disability) is awarded under the head 'permanent disability'. Hence the amount awarded by the Tribunal towards this head stands modified to Rs.1,50,000/-.

12. The Tribunal further awarded a sum of Rs.20,000/- towards pain and suffering, Rs.2,000/- towards extra nourishment, Rs.500/- towards damage to clothes, Rs.2,000/- towards transportation charges, Rs.9,702/- towards medical expenses, Rs.3,250/- towards loss of income, Rs.2,000/- towards loss of amenities and Rs.1,000/- towards attender charges, which, in the considered view of this Court, are found to be appropriate.

13. Further, definitely the appellant - claimant cannot continue his avocation as driver as before. Hence, the amount of Rs.2,000/- awarded towards future medical expenses, in the mind of this Court, appears to be on the lower side, as the appellant - claimant will have to spend some more money to take care of himself because of the injuries he sustained in the accident. Hence, this Court feels it appropriate to award a sum of Rs.12,000/- towards future medical expenses instead of Rs.2,000/-.

14. Thus the claimant is entitled to the modified compensation of Rs.2,02,452/- rounded off to Rs.2,02,500/-, with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

15. In the light of the above, the above Civil Miscellaneous Appeal is partly-allowed, by arriving the total compensation at Rs.2,02,452/-, which is rounded off to Rs.2,02,500/- together with interest, as stated above, (including the interest for the head 'Future Medical Expenses'). The second respondent is directed to deposit the modified compensation amount, as arrived at by this Court now, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the entire amount of compensation to the Savings Bank Account of the appellant - claimant through RTGS within one week thereafter. No costs.

s/d-

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The Motor Accidents Claims Tribunal (IV Judge, Small Causes Court), Chennai.

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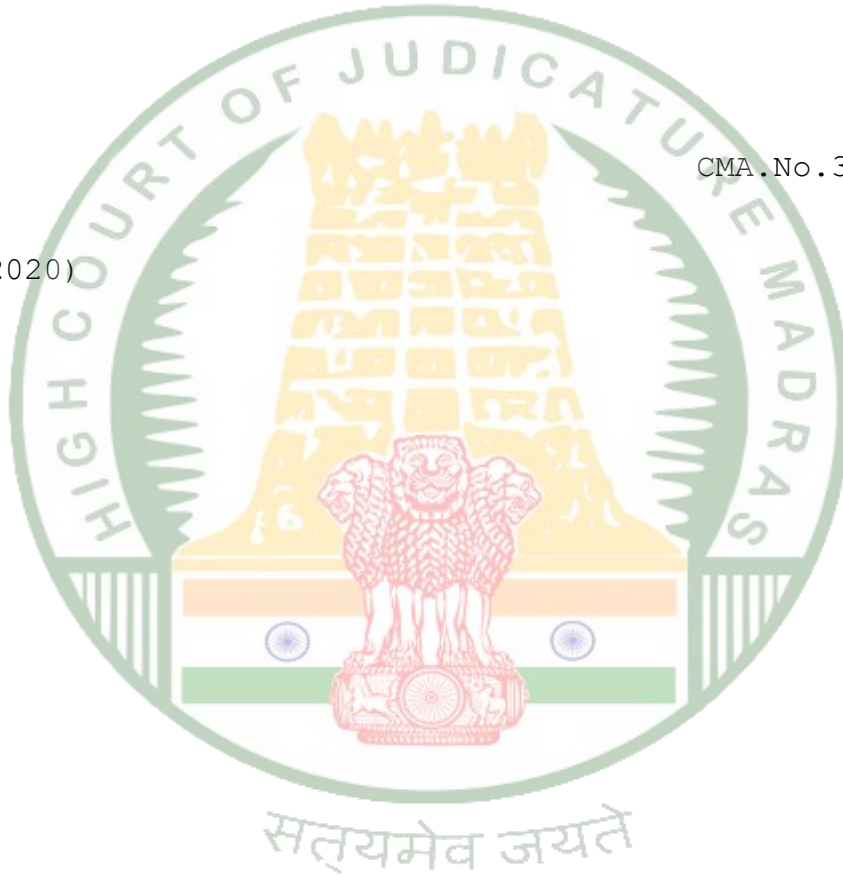
The Section officer
VR Section
High Court, Madras 104.

+1 CC to M/s.M. Malar, Advocate sr 97682.

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CMA.No.3046 of 2017

PM(CO)
SP(12/08/2020)



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