

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :24.09.2020

Pronounced on :30.09.2020

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1379 of 2015
and
Cross Objection No.35 of 2019
and
M.P.No.1 of 2015

C.M.A.No.1379 of 2015:

The Managing Director,
Metropolitan Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai 600 002.

.. Appellant /Respondent

/versus/

1.Smt.V.A.Chandrika

2.C.R.Padmanabhan

3.C.P.Smikesh

.. Respondents /Claimants

Prayer in C.M.A.No.1379 of 2015: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 28.02.2014 passed in M.C.O.P.No.2322 of 2011 by the learned Chief Judge of Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Appellant :Dr.S.S.Swamninathan
For Respondents:Mr.K.Subburam

Cross Objection No.35 of 2019:

1.Smt.V.A.Chandrika

2.C.R.Padmanabhan

3.C.P.Smikesh

.. Appellants /Claimants

/versus/

The Managing Director,
Metropolitan Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai 600 002.

.. Respondent /Respondent

Prayer in Cross Objection No.35 of 2019: Cross Objection has been filed under Order 41 Rule 22 of the Civil Procedure Code praying to enhance the compensation awarded to the claimant, the appellants/respondents.

For Appellants :Mr.K.Subburam

For Respondent :Dr.S.S.swaminathan

COMMON JUDGMENT

(The case has been heard through Video conference)

The appeal and cross objection are in respect of the award passed by Motor Accident Claims Tribunal, Chennai. Aggrieved with the quantum of award, the civil miscellaneous appeal is filed by the transport corporation challenging it as excessive. Whereas the cross objection is by the claimants for enhancement of compensation.

2.On 05/10/2008, at about 19.30 hrs, the deceased C.P.Sajeev while travelling in the motorcycle bearing registration No.KL 8 X 4968 along with his friend Deepin Simon near LB Road, Adayar, the transport corporation bus bearing registration No.TN 01 N 3099 dashed the motorcycle from behind. In the said impact, the motorcycle of the deceased, rammed into another bus of the transport corporation which was stationed in front of the motorcycle. Due to this, the rider as well as the pillion rider sustained multiple injuries and succumbed to the injuries.

3.Criminal case was registered against the bus driver for offence under Sections 279, 337 and 304 A IPC (two counts). Alleging negligence and rash driving against the bus driver a claim petition was filed jointly by the parents and elder brother of the deceased. As far as quantum of compensation is concerned, it was claimed that the deceased was working as Territory Leader in CEAT Limited earning Rs.35,000/- per month. He was 27 years old bachelor at the time of accident. Hence, compensation of Rs.50,00,000/- was sought.

4.The claim petition was contested by the Transport Corporation mainly on the ground that the accident occurred due to the negligence of the deceased. The respondent bus driver was driving the bus very slowly on the L.B. Road as there was

ongoing construction of centre media and traffic congestion. Near Adyar Mosque the deceased along with the pillion rider overtook the bus in a rash and speedy on the right side and attempted to pass through the narrow gap between the respondent bus route No.M 5 and another bus route No.5E (deluxe). In that process, the motor cyclist bearing Registration No. KL 8 X 4698 dashed the rear side of the Route 5E bus voluntarily. He lost his balance and collided with bus route No.M5 thereby invited the accident. Hence, the motorcycle rider alone is wholly responsible for the accident as he recklessly negotiated through the narrow gap between two buses.

5.Before the Tribunal, the claimants examined 3 witnesses and relied upon 14 documents. The respondent transport corporation examined the bus driver to prove his innocence.

6.The Tribunal fixed negligence on the bus driver, rejecting the witness of the bus driver as interested witness and accepted the evidence of PW-2, as the independent eye witness. Based on the date of birth (21.02.1981) shown in the transfer certificate Ex.P-1, the age of the deceased was fixed as 27 years. The pay particulars and wage slips issued by CEAT Limited were taken into consideration for fixing his income. After excluding the Management supplement of Rs.6500/- which is a variable given for the personal benefit of the deceased employee, the Tribunal took into account the basic pay Rs.8,960/- and personal pay Rs.14,460/- and fixed the income as Rs.23,420/- per month. After deduction 20% for income tax and 50% for the personal expenditure of the deceased, the Tribunal applied the multiplicand '17' to compute the loss of income. In all, a total sum of Rs.19,51,072/- with interest at the rate of 7.5% p.a., was awarded as compensation by the Tribunal to be shared by the father and mother of the deceased equally.

7.In the appeal, the Transport Corporation pointing out the sketch of the accident site marked as Ex.P-6, MVI report marked as Ex.P-8 and the evidence of DW-1, submitted that the Tribunal erred in not holding that the accident could not have occurred without the contribution of the deceased, who tried to enter between two moving bus.

8.The learned counsel for the claimants, who have preferred the cross objection submitted that the Tribunal ought to have awarded additional compensation for future prospect. It ought not have excluded Management supplement Rs.6,500/- while computing income and ought to have deducted only 10% towards income tax, since at the time of accident, the tax slab for Annual income less than Rs.5,00,000/- was only 10%.

9.The accident as narrated by PW-2 before the Court and as averred in the claim petition, reveals that it was a freak accident. The eye witness who is also the first informant to the police has deposed that the bus going ahead stopped suddenly. The two wheeler rider following that bus from behind also applied break. The second bus following them dashed and crashed the vehicle and the riders.

10.Contrarily, the version of the bus driver is that there was traffic jam due to construction of central median. The vehicles were moving slowly. The motorcycle rider from right side tried to enter between the two moving bus. He lost his balance by hitting the bus moving ahead and fell under the wheels of the bus coming behind.

11.In this connection to ascertain the manner in which the accident occurred, the First Information Report registered at the instance of one Kumaradevan and his deposition along with the rough sketch, the deposition of the bus driver Danachezian and the Motor Vehicle Inspector report on the damaged vehicles need to be scrutinized.

12.Kumaradevan in his complaint (Ex.P-5) has stated that the two wheeler moving from North to South on the LB Road, tried to move from right side to left side. It entered in between the MTC bus route No.5 E and MTC bus route No.M5. Suddenly the MTC bus 5E stopped. The Motorcyclist also applied break and stopped. The MTC bus route No.M 5 coming behind the motorcycle dashed the motorcycle and pushed it towards the stationed MTC bus 5E. It stopped after hitting MTC 5 E. The motorcycle and its riders fell crushed in between these two MTC buses.

13.Before the tribunal, Kumaradevan was examined as PW-2. In his deposition, the witness omitted to say that the two wheeler rider moved from right to left between two buses. Instead he has deposed that the two wheeler was following the bus route No.5 E. When the bus 5 E stopped, the motorcyclist also stopped. But, the bus route No.M 5 rashly hit the motor cycle and pushed it towards the bus stationed ahead. In the cross examination, he denies any centre median in that road. The rough sketch prepared by the police during investigation after registration of the FIR is marked as Ex P-6. The rough sketch indicates LB Road is a 33 feet wide on either side with center median. The motorcycle has caught in between the two MTC buses bearing registration No.TN 01 N 3099 (route No. M 5) and registration No.TN 01 N 7602 (route No.5E). The Motor Vehicle Inspection report in respect of the motorcycle and two MTC buses are marked as Ex.P-8 series.

The damages found on the motor cycle are:-

- 1) Rear left side indicator and danger light damaged.
- 2) Front left side foot rest bend.
- 3) Rear registration number plate bend.
- 4) Front head light and covered guard damaged.
- 5) Front left side rear view mirror damaged.
- 6) Front wheel mudguard body paint slightly scratched.

The damages found in the offending bus bearing registration TN 01 N 3099 (route M 5) :-

- 1) Front head light both side damaged.
- 2) Front central grill and front bumper (centre portion) pressed and damaged.

The damages found in the MTC bus bearing registration No. TN 01 N 7602 (route 5 E).;-

- 1) Rear body (left) and centre portion body slightly pressed.
- 2) Rear registration number plate lightly damaged.

14.From the damages caused to the vehicles, the version of the accident as mentioned in the FIR seems to be correct. The motorcycle has sustained major damages on the left side parts. This could have happened only if the impact was heavily on the left side. That is possible when the two wheeler from right to left entered between two buses and fell on the left.

15.The damage of front central grill and front bumper (centre portion) pressed in route No.M 5 bus and the rear body (left) and centre portion body slightly pressed in route No.5 E synchronise with the damages on the two wheeler. The sketch Ex.P-6 which was prepared immediately after the accident also strengthens the case of the appellant that without the contribution of the deceased, the accident could not have occurred.

16.It is also to be noted, in the cross examination, DW-1 has answered in affirmative to the question that there was enough space on either side for the two wheeler to move. Therefore, the version of the defendant that the deceased entered into the gap between two buses from right to left is more probable. Whereas, the deposition of PW-3, that the motor cyclist were stopped their two wheel straight behind the stationed bus route No.5E is contrary to the contemporaneous

document namely, the First Information Report and the rough sketch Ex.P-6. The deposition of PW-2 contradicting his previous statement (FIR) and contrary to rough sketch about the center median seems to be an apparent lie and contradictory, which make it and not worth relying.

17. In the opinion of this Court, the Tribunal has wrongly been carried away by the deposition of PW-2, without considering his earlier statement in the complaint, the sketch prepared by the police and the MVI report. Men may lie, circumstances will not. The damages to these 3 vehicles tells about the parts of contact during the accident. From the MVI report, this Court finds that, at the time of impact with the offending bus, the motor cycle was not in straight line but was on horizontal line. Therefore, the accident had occurred when the motorcyclist had tried to pass through the gap between two buses from right to left. Had the motorcyclist shown some diligence before cut crossing between two moving vehicles, he could have avoided the accident.

18. Having held that the accident has occurred due to the contributory negligence of the deceased, it is next to decide the percentage for fixing the negligence. The learned counsel for the appellant would insist that the contribution of the deceased should be 50% atleast, since the deceased invited the accident by his own recklessness, inspite of the fact that the traffic was moving very slowly.

19. On considering the cross objection, this Court finds that the tribunal has not awarded any additional compensation for future prospects and had deducted 20% instead of 10% towards income tax. Therefore, instead of disturbing the compensation awarded by the tribunal, the compensation required to be enhanced is set off towards the contributory negligence of the deceased.

20. In the result, Civil Miscellaneous Appeal No.1379 of 2015 and the Cross Objection No.35 of 2019 are dismissed. the award of the Tribunal passed in M.C.O.P.No.2322/2011 is confirmed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
The Chief Judge, Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section, High Court,
Madras-104.

+lcc to Mr.S.S.Swaminathan, Advocate, S.R.No.32050

C.M.A.No.1379 of 2015
and
Cross Objection No.35 of 2019
and
M.P.No.1 of 2015

RR(CO)
CB(31/08/2021)