

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1425 of 2015 and 560 of 2020
and
M.P.No.1 of 2015

C.M.A.No.1425 of 2015:

The Managing Director,
Tamil Nadu State Transport
Corporation (VPM) Limited,
Kancheepuram Region,
Kancheepuram.

... Appellant/Respondent

Vs.

P.C.Madhu Babu

.. Respondent/Petitioner

C.M.A.No.560 of 2020:

P.C.Madhu Babu

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Kancheepuram.

.. Respondent/Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.09.2013 made in M.C.O.P.No.2914 of 2009 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

In C.M.A.No.1425 of 2015:

For Appellant : Mr.K.J.Sivakumar

For Respondent : Mr.J.Ramkumar for
Mr.S.Parthasarathy

In C.M.A.No.560 of 2020:

For Appellant :Mr.J.Ramkumar for
Mr.S.Parthasarathy

For Respondent : Mr.K.J.Sivakumar

COMMON JUDGMENT

C.M.A.No.1425 of 2015 is filed by the respondent-Transport Corporation against the award dated 30.09.2013 made in M.C.O.P.No.2914 of 2009 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai and C.M.A.No.560 of 2020 is filed by the claimant for enhancement of compensation.

2.Both the appeals are arising out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The respondent in C.M.A.No.1425 of 2015 and the appellant in C.M.A.No.560 of 2020 is the claimant in M.C.O.P.No.2914 of 2009 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.09.2007.

4.According to the claimant, on 02.09.2007 at about 09.30 P.M., while he was boarding the bus belonging to the respondent-Transport Corporation at RTC bus stand, Tirupathi, the driver of the bus started the bus in a very rash and negligent manner and due to the sudden jerk, the claimant fell down and the right rear wheel of the bus ran over the claimant's right leg and he sustained grievous injuries. At the time of accident, the claimant was aged 47 years, Rice Merchant and was earning a sum of Rs.20,000/- per month. Therefore, he filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the respondent-Transport Corporation.

5.The respondent-Transport Corporation filed counter statement and denied various averments made by the claimant. According to the respondent-Transport Corporation, on 02.09.2007 at about 09.30 P.M., at Tirupathi RTC bus stand, the driver of the bus belonging to the respondent-Transport Corporation was coming to halt in the platform for boarding the passengers and there was a heavy crowd in the bus stand. On seeing the bus coming in the platform, the claimant and other passengers came rashly towards the bus and the claimant tried to board the vehicle which was moving slowly. Therefore, he lost his balance and fell down on the way in the middle of another passenger and sustained injuries. Therefore, the accident has occurred only due to negligent act of the claimant. Hence, the respondent-Transport Corporation is not liable to pay any compensation to the claimant. The claimant has to prove his age, avocation and

income by producing valid documents. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the claimant examined himself as P.W.1,one Vijayalakshmi was examined as P.W.2 and Dr.K.J.Mathiazhagan was examined as P.W.3 and 14 documents were marked as Exs.P1 to P14. On behalf of the respondent-Transport Corporation, the conductor of the bus, K.Manikandan was examined as R.W.1 and no documents were marked.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.2,02,000/- as compensation to the claimant.

8.Against the said award dated 30.09.2013 made in M.C.O.P.No.2914 of 2009, the respondent-Transport Corporation has come out with an appeal in C.M.A.No.1485 of 2015 and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with an appeal in C.M.A.No.560 of 2020 seeking enhancement of compensation.

9.The learned counsel appearing for the claimant contended that the Tribunal rightly fixed the negligence on the part of the driver of the bus belonging to the respondent-Transport Corporation based on the evidence of P.W.1 and Ex.P1/F.I.R. P.W.3/Doctor examined the claimant and certified that the claimant suffered 60% disability and issued Ex.P14/disability certificate to that effect. The Tribunal without giving any valid reason reduced the percentage of disability to 55% and awarded compensation only for 55% disability at the rate of Rs.1,800/- per percentage of disability. The Tribunal ought to have awarded compensation for 60% disability. The claimant has taken treatment in the S.V.R.R.G.G.Hospital as in-patient from 03.09.2007 to 04.09.2007 and at Soundarapandian Bone and Joint Hospital & Research Institute Private Limited, Chennai from 05.09.2007 to 05.11.2007 but the Tribunal has not awarded any amount towards attendant charges. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are meagre and prayed for enhancement of compensation.

10.The learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal ought not to have considered the evidence of P.W.1, whose evidence was not corroborated by any other independent witness. The Tribunal fixed negligence on the part of the driver of the bus belonging

to the respondent-Transport Corporation only on the basis of accepting the F.I.R., which was registered against him. The claimant has not produced any material evidence with regard to his avocation and income. The Tribunal ought not to have fixed the disability of the claimant at 55% and the compensation awarded towards pain and sufferings is highly excessive. The total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal.

11. Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the respondent-Transport Corporation and perused the entire materials on record.

12. From the award passed by the Tribunal, it is seen that the claimant as P.W.1 has deposed that the accident has occurred only due to negligence on the part of the driver of the bus belonging to respondent-Transport Corporation and also produced Ex.P1/F.I.R., which was registered against the driver of the bus belonging to the respondent-Transport Corporation. On the other hand, the respondent-Transport Corporation has examined the conductor of the bus as R.W.1, who deposed that he has not seen the accident and the driver of the respondent-Transport Corporation's bus was not examined. The Tribunal considering the evidence of P.W.1, Ex.P1/F.I.R. and no contra evidence on the part of the respondent-Transport Corporation to disprove the contention of P.W.1 and Ex.P1/F.I.R., held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

13. As far as quantum of compensation is concerned, P.W.3/Doctor examined the claimant and certified that the claimant suffered 60% disability and issued Ex.P14/disability certificate to that effect. The respondent-Transport Corporation did not let in any contra evidence to disprove the evidence of P.W.3/Doctor and Ex.P14/disability certificate. The Tribunal reduced the percentage of disability to 55% on the ground that P.W.3/Doctor has not given treatment to the claimant and assessment of disability by P.W.3/Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not correct and the claimant is entitled to compensation for 60% disability. The accident occurred in the year 2007 and the Tribunal has awarded a meagre sum of Rs.1,800/- per percentage of disability. The claimant is entitled to a sum of Rs.2,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,20,000/- [Rs.2,000/- X 60% disability]. From the award passed by the Tribunal, it is seen that the claimant has taken treatment in the

S.V.R.R.G.G.Hospital as in-patient from 03.09.2007 to 04.09.2007 and at Soundarapandian Bone and Joint Hospital & Research Institute Private Limited, Chennai from 05.09.2007 to 05.11.2007 and the Tribunal has not awarded any amount towards attendant charges. Therefore, a sum of Rs.10,000/- is awarded towards attendant charges. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	99,000/-	1,20,000/-	Enhanced
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Loss of income	24,000/-	24,000/-	Confirmed
4.	Transportation	9,000/-	9,000/-	Confirmed
5.	Extra nourishment	20,000/-	20,000/-	Confirmed
6.	Attendant charges	-	10,000/-	Granted
	Total	Rs.2,02,000/-	Rs.2,33,000/-	enhanced by Rs.31,000/-

14.The compensation awarded by the Tribunal at Rs.2,02,000/- is hereby enhanced to Rs.2,33,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2914 of 2009 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court.

15.In the result, C.M.A.No.1425 of 2015 filed by the respondent-Transport Corporation is dismissed and the

C.M.A.No.560 of 2020 filed by the claimant is partly allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mtl

To

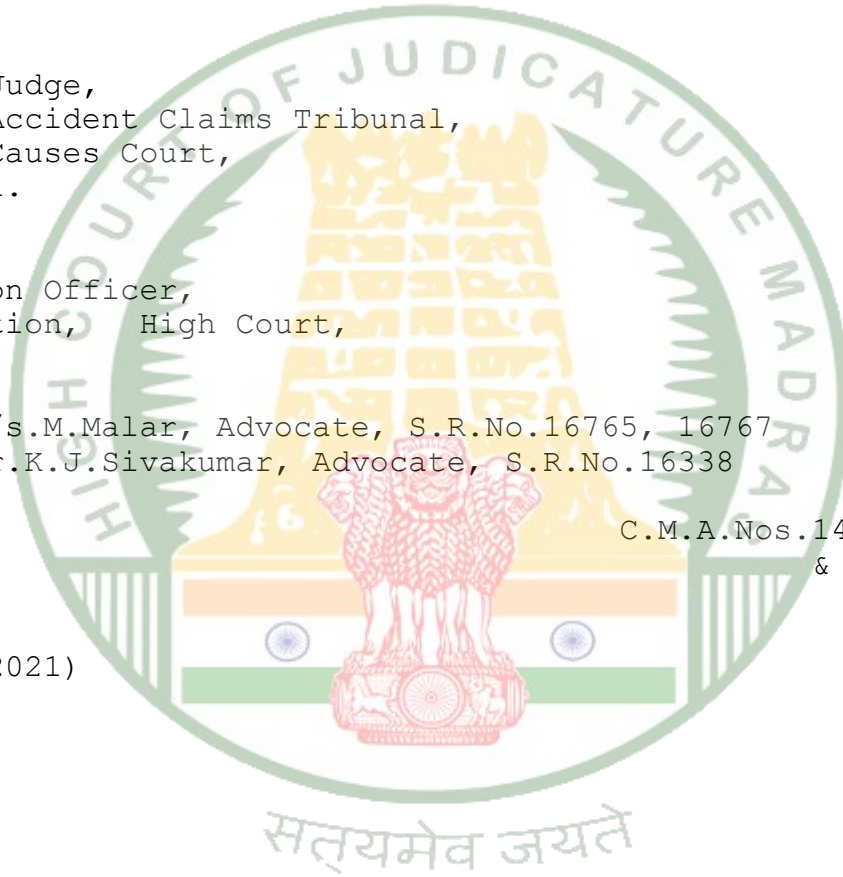
1.The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

+2cc to M/s.M.Malar, Advocate, S.R.No.16765, 16767
+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.16338

C.M.A.Nos.1425 of 2015
& 560 of 2020

VG-I(CO)
CB(20/04/2021)



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