

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1329 of 2012

and

C.M.P.Nos.1,1 of 2012

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division II, Vellore.
... Appellant/3rd Respondent

Vs.

1. N.Ajith Kumar ...1st Respondent/ Petitioner
2. A.Zubair Ahmed ...2nd Respondent/1st Respondent
3. The New India Assurance Co. Ltd.,
No.45/146, Moore Street,
Chennai - 1. ...3rd Respondent/2nd Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 24.11.2011 made in M.C.O.P.No.386 of 2004 on the file of the IV Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.S.V.Vasantha Kumar

For R1 : Mr.A.Shanmugaraj

For R3 : Mr.M.Krishnamoorthy

R2 - Not Ready in Notice

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 24.11.2011 made in M.C.O.P.No.386 of 2004 on the file of the IV Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2. The case of the appellant is that on 06.05.2003 at about 3.00 p.m., while the first respondent was traveling as passenger

in the appellant's bus bearing Registration No.TN-27-N-0888, a Lorry bearing Registration No.KA-O-01-8269 which was driven by its driver in a rash and negligent manner dashed against the bus. Due to the impact, the first respondent had sustained grievous injuries, hence he was admitted in the Government Hospital at Vellore for treatment. Subsequently, he was shifted to Sri Ramachandra Medical Centre, there he took treatment from 07.05.2003 to 28.05.2003. At the time of accident, he was aged 36, and before the accident, he was working as a Senior Technician and was earning Rs.9,900/- to Rs.15,600/- per month. Due to the accident, he became permanently disabled, hence he filed a petition before the IV Small Causes Court (Motor Accidents Claims Tribunal), Chennai, claiming Rs.30,00,000/- as compensation from the second and third respondents as they are the owner and insurer of the Lorry involved in the accident.

3. Denying the allegations, the appellant filed a counter affidavit stating that the accident was caused only by the rash and negligent driving of the second respondent's driver and they are not responsible for the alleged accident. Further, it has been stated that the first respondent had not at all travelled in the accident bus, and if he would travelled in the bus, he has to prove by producing documentary evidence such as the Bus ticket and the Hospital Accident Register. Moreover, it has been stated that the alleged age, occupation, monthly income, nature of injuries and disability are not true and the amount of compensation claimed is more excessive and exorbitant.

4. The third respondent insurance company also filed a counter affidavit denying the allegations stating that the accident was caused only by the driver of the appellant and not by the driver of the second respondent. Further, it has been stated that the second respondent's driver had no valid driving licence, permit and fitness certificate at the time of accident and the first respondent has to strictly prove that the driver of the second respondent had possessed the said documents at the time of accident. Moreover, it has been stated that the alleged age, income, occupation and disability are not true and the amount of compensation claimed is highly excessive.

5. During the trial, on the side of the first respondent, the first respondent himself was examined as PW1 and has marked certain documents as Exs.P1 to P26, and two doctors, namely, Saichandran and Thiagarajan were examined as PW2 and PW3. On the side of the appellant and the second and third respondents, one Mr.Deenadayalan, Conductor of TNSCTC Bus, was examined as RW1, one Mr.Banugoban, Driver of the TNSCTS Bus, was examined as RW2, one Dr.M.Ganapathy was examined as RW3 and Exs.R1 to R6 were marked.

6. The Learned Motor Accidents Claims Tribunal, Small Causes Court, Chennai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent and awarded Rs.21,38,600/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Income	90,000
2.	Transport to Hospital	25,000
3.	Extra Nourishment	50,000
4.	Medical Expenses	1,45,600
5.	Pain and Sufferings	1,00,000
6.	Permanent Disability	17,28,000
	Total	21,38,600

7. Aggrieved by the award, the appellant has filed this appeal before this Court, submitting that the Tribunal has erred in awarding the said sum.

8. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 & 3, and perused the materials available on record.

9. On perusal of the award dated 24.11.2011 passed by the Learned Motor Accidents Claims Tribunal, Small Causes Court, Chennai, it is observed that the first respondent in order to prove that the second respondent's driver was the cause for the alleged accident marked FIR copy as Ex.P1, but the Tribunal after perusing the entire materials on record has found that the accident was caused by both the lorry and bus drivers, and therefore, the Tribunal has fixed the negligence on both the drivers equally. Further, the Tribunal has found that the second respondent's lorry was insured under the third respondent at the time of accident, and therefore, the Tribunal has held that the third respondent is liable to pay 50% of the compensation on behalf of the second respondent and the remaining 50% would be paid by the appellant.

10. It is also observed from the award of the Tribunal that the first respondent in order to prove his avocation has marked his salary slip as Ex.P11, and the Tribunal only after perusing the same has fixed his income as Rs.15,000/- per month. Further, it is observed that the first respondent has marked his Leave Certificate as Ex.P14, and on perusal of the same, the Tribunal has found that the first respondent was on medical leave and had taken treatment for nearly six months, and therefore, has awarded Rs.90,000/- i.e. Rs.15,000/- per month, towards Loss of

Income. Moreover, it is observed that the first respondent has marked his medical bills and hospital bills as Exs.P8 & P9, and on perusal of the same, the Tribunal has found that the first respondent had spent nearly Rs.1,50,000/- for Medical Expenses, and therefore, has awarded an exorbitant amount i.e. Rs.1,45,600/- towards the said head.

11. It is further observed from the award of the Tribunal that the first respondent in order to prove his disability examined two doctors, namely, Dr.Saichandran and Dr.Thiagarajan as PW2 and PW3. The Dr.Saichandran has stated in his deposition that due to the accident, the first respondent's right thigh bones had been fractured and hence a plate was fixed and a surgery was made to him. But, in spite of the surgery, his bones were not joined and he troubled to sit, stand and walk for long time, and therefore, he assessed 65% permanent disability. The Dr.Thiagarajan has stated in his deposition that the first respondent's forehead bone had been fractured, and due to which, he suffered from headache, dizziness and tremors, and therefore, he assessed 30% disability. Though the doctors have assessed 95% disability, the Tribunal after perusing the disability certificates marked by PW2 and PW3 has found that the first respondent has sustained only 60% disability, and therefore, has awarded Rs.17,28,000/- ($15000 \times 12 \times 16 \times 60\%$) towards the said head. Moreover, it is observed that the Tribunal only considering the nature of injuries sustained by the first respondent has awarded Rs.50,000/- for Extra Nourishment and Rs.1,00,000/- for Pain & Sufferings, and further, during the period of treatment, the first respondent definitely would have incurred expenses for Transport, and the Tribunal only considering the same has awarded Rs.25,000/- towards the said head. The entire medical records were scrutinized by this Court and found that the disability suffered by the first respondent to the extent of 60% is proved.

12. In view of the above observations made by this Court, this Court do not find any error in awarding the compensation at Rs.21,38,600/- by the Court below and therefore, not inclined to interfere with the same.

13. Accordingly, the appellant and the third respondent are directed to deposit the said amount equally in the ratio of 50:50 as stated by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

14. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

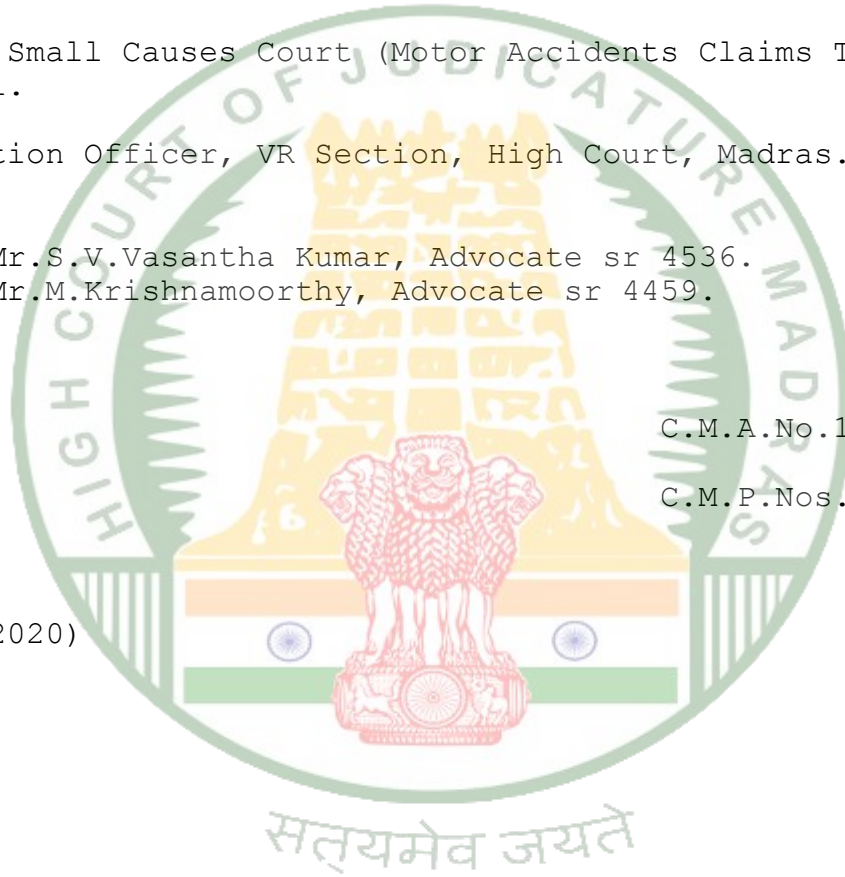
To

1. The IV Small Causes Court (Motor Accidents Claims Tribunal), Chennai.
2. The Section Officer, VR Section, High Court, Madras.

+1 CC to Mr.S.V.Vasantha Kumar, Advocate sr 4536.
+1 CC to Mr.M.Krishnamoorthy, Advocate sr 4459.

C.M.A.No.1329 of 2012
and
C.M.P.Nos.1,1 of 2012

BP (CO)
SP(13/08/2020)



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