

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.03.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1924 OF 2013

The Managing Director

Tamil Nadu State Transport Corporation Ltd.

Kancheepuram.

.. Appellant/Respondent

Vs

S.Gnanakumar

.. Respondent/Claimant

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.01.2013 made in M.C.O.P.No.2981 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

For Appellant : Mr.K.J.Sivakumar

For Respondent : Mr.K.Varadha Kamaraj  
for M/s.V.Mohan Choudary

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/Transport Corporation against the judgment and decree dated 23.01.2013 made in M.C.O.P.No.2981 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.2981 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai. The respondent filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.03.2009.

3.According to the respondent, on the date of accident i.e., on 20.03.2009 at about 6.30 hours, he was a driver on duty in the bus bearing Registration No.TN-32-N-3088 and the said bus was parked inside CMBT Koyambedu. While the respondent was cleaning the front glass of the said bus, another bus bearing Registration No.TN-21-N-1096 belonging to the appellant/

Transport Corporation, which was also parked in front of the respondent's bus, suddenly started and came in the reverse direction in a rash and negligent manner, without giving any signal by the conductor, dashed on the respondent's bus and caused the accident. Due to the accident, the respondent was crushed in between two buses and sustained grievous injuries. Therefore, the respondent has filed the above claim petition claiming compensation against the appellant/Transport Corporation.

4.The appellant/Transport Corporation filed counter statement denying the averments made by the respondent and stated that the bus belonging to the appellant/Transport Corporation bearing Registration No.TN-21-N-1096 was parked in the Koyambedu bus stand for non-vacancy in the allotted platform and the respondent has parked the bus behind the appellant bus. Some other buses were parked in front of the appellant bus. At about 6.30 hours, in order to park the appellant bus into the allotted platform for its trip, the driver of the bus belonging to the appellant tried to take his vehicle in the reverse direction, while the respondent was wiping out his vehicle's wind screen glass without noticing the appellant bus coming towards him. The appellant bus slightly touched over the respondent bus and the accident has occurred due to negligence on the part of the respondent. The respondent did not take any cautious measure. If the respondent has moved on either side on seeing the appellant bus, the accident could have been avoided. Therefore, the appellant is not liable to pay any compensation to the respondent and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined himself as P.W.1 and Dr.K.J.Mathiazhagan was examined as P.W.2 and marked 27 documents as Exs.P1 to P27. On the side of the appellant, one A.Loganathan, the driver of the bus was examined as R.W.1 and did not file any document.

6.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 appellant/Transport Corporation and directed the appellant to pay a sum of Rs.6,98,500/- as compensation to the respondent.

7.Against the said award dated 23.01.2013 made in M.C.O.P.No.2981 of 2009, the appellant/Transport Corporation has come out with the present appeal challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

8.The learned counsel appearing for the appellant/Transport Corporation contended that the accident has occurred due to negligence on the part of the respondent, while he was cleaning the front glass of the bus without any caution & care. While the driver of the bus belonging to the appellant was reversing the bus, the respondent caught between two buses and sustained injuries. The accident has occurred solely due to negligence on the part of the respondent. The Tribunal failed to consider the counter statement filed by the appellant and evidence of R.W.1, driver of the bus belonging to the appellant and erred in holding that if the driver of the bus belonging to the appellant bearing Registration No.TN-21-N-1096 saw both sides of the bus in the side mirror, the accident could have been avoided. The respondent has not suffered any functional disability and the multiplier method adopted by the Tribunal is not correct. The compensation awarded by the Tribunal for 45% disability is excessive. The respondent is still working as a driver in the appellant/Transport Corporation without any reduction of salary. The respondent is not entitled for any compensation towards loss of income and loss of earning power. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

9.Per contra, the learned counsel appearing for the respondent contended that the driver of the bus belonging to the appellant, bearing Registration No.TN-21-N-1096, without taking any precaution, reversed the bus at high speed and dashed on the bus, in which the respondent was cleaning the front glass. The accident has occurred, while the driver of the bus belonging to the appellant, bearing Registration No.TN-21-N-1096, was reversing the bus. F.I.R. was registered only against the driver of the bus bearing Registration No.TN-21-N-1096. The respondent has taken treatment in the Government hospital and subsequently, in MIOT hospital as in-patient on two occasions. P.W.2/Doctor has deposed the nature of injuries sustained by the respondent and assessed the disability of the respondent as 45%. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant/Transport Corporation as well as the respondent and perused the entire materials available on record.

11.It is the contention of the respondent that the accident has occurred only due to rash and negligent driving by the driver of the bus bearing Registration No.TN-21-N-1096, while he was reversing the bus in a careless manner at high speed, without any precaution and dashed against the bus in which, the respondent was cleaning the front glass. The respondent proved the same by examining himself as P.W.1 and marking F.I.R. as

Ex.P1 and charge sheet as Ex.P3, which was registered against the driver of the bus bearing Registration No.TN-21-N-1096. On the other hand, it is the contention of the appellant/Transport Corporation that the accident has occurred due to negligence on the part of the respondent, as he did not notice the bus bearing Registration No.TN-21-N-1096 coming in the reverse direction towards the platform for the passengers to get into the bus. To substantiate this contention, the appellant examined the driver of the bus bearing Registration No.TN-21-N-1096, as R.W.1.

12.From the materials available on record, it is seen that the appellant has not let in any evidence to show that after taking precaution, the driver of the bus belonging to the appellant reversed the bus. It is basic principle that when a vehicle is reversed, some body must caution the driver to show that any body is standing or any vehicle is parked. In view of the above, the finding of the Tribunal that the accident has occurred only due to negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation, bearing Registration No.TN-21-N-1096, is valid and there is no error in the said finding of the Tribunal warranting interference by this Court.

12.As far as quantum of compensation is concerned, the respondent examined himself as P.W.1 and deposed about the nature of injuries and period of treatment taken by him. He has also examined the doctor as P.W.2, who deposed about the injuries sustained and treatment taken by the respondent. P.W.2/Doctor has assessed the disability of the respondent as 45%. P.W.2/Doctor has not deposed that the respondent suffered functional disability and he could not continue his job as driver as he was doing earlier. The respondent was referred to the Medical Board and the Medical Board issued Ex.P21/Unfit Certificate to the respondent to function as driver. The appellant/Transport Corporation considering Ex.P21, has given alternative employment to the respondent as a clerk with same salary. The respondent has not pleaded and substantiated that he lost income. Failure on the part of the respondent to prove that he lost income, the multiplier method adopted by the Tribunal is erroneous. Therefore, the appellant is entitled to compensation only by applying percentage method. In view of the above, a sum of Rs.3,88,800/- awarded by the Tribunal towards loss of earning power is set aside. P.W.2/Doctor has deposed that the respondent suffered 45% disability. The Tribunal awarded a sum of Rs.25,000/- towards disability, which is meagre. The accident has occurred in the year 2009 and hence, a sum of Rs.2,000/- is awarded per percentage of disability. Therefore, a sum of Rs.90,000/- (Rs.2,000/- X 45%) is awarded towards disability.

12(i).The respondent produced two discharge summaries to show that he has taken treatment as in-patient in the hospital for 17 days. A sum of Rs.5,000/- each awarded by the Tribunal towards attendant charges and extra nourishment respectively are meagre. Considering the nature of injuries and period of treatment taken by the respondent, the compensation awarded by the Tribunal towards attendant charges and extra nourishment are enhanced to Rs.10,000/- each. The respondent has not produced any document to show that he lost income during treatment period. In view of the same, a sum of Rs.18,000/- awarded by the Tribunal towards loss of income during treatment period is set aside. The amounts awarded by the Tribunal under all other heads 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 or reduced |
|------|---------------------------------|----------------------------------|-----------------------------------|---------------------------------------------------|
| 1.   | Loss of income for three months | 18,000                           | -                                 | Set aside                                         |
| 2.   | Transportation                  | 5,000                            | 5,000                             | Confirmed                                         |
| 3.   | Extra nourishment               | 5,000                            | 10,000                            | Enhanced                                          |
| 4.   | Damage to clothes               | 1,500                            | 1,500                             | Confirmed                                         |
| 5.   | Medical expenses                | 1,50,000                         | 1,50,000                          | Confirmed                                         |
| 6.   | Attendant charges               | 5,000                            | 10,000                            | Enhanced                                          |
| 7.   | Loss of amenities               | 50,000                           | 50,000                            | Confirmed                                         |
| 8.   | Pain and suffering              | 50,000                           | 50,000                            | Confirmed                                         |
| 9.   | Loss of earning power           | 3,88,800                         | -                                 | Set aside                                         |
| 10.  | Permanent disability            | 25,000                           | 90,000                            | Enhanced                                          |
|      | Total                           | 6,98,300 rounded off to 6,98,500 | 3,66,500                          | Reduced by Rs.3,32,000/-                          |

13.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.6,98,500/- awarded by the Tribunal is hereby reduced to Rs.3,66,500/-

together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Transport Corporation is directed to deposit the modified 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. On such deposit, the respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.2981 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai, if the entire award amount has already been deposited by them. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Judge  
The Motor Accident Claims Tribunal  
Small Causes Court, Chennai.
2. The Section Officer  
VR Section, High Court  
Chennai.

+1cc to M/s.V.Mohan Choudary, Advocate Sr.No.24553

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C.M.A.No.1924 of 2013

GP(CO)

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