

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2754 of 2013
and M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation,
No.12, Ramakrishna Road,
Salem. ...Appellant/Respondent

Vs

Minor Praveen Kumar
Rep. By his father Natarajan ... Respondent/Claimant

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.08.2012 made in MCOP.No.20 of 2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

For Appellant : Mr.D.Venkatachalam

For Respondent : Mr.M.Lokesh for Ma.Pa.Thangavel

JUDGMENT

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the appellant/transport corporation challenging the award dated 27.08.2012 passed by the Motor Accident Claims Tribunal (Additional District Judge), Namakkal in MCOP.No.20 of 2012.

2. The Appellant is a Transport Corporation. The respondent/claimant sustained injuries on 30.08.2011 as a result of an accident caused by a bus bearing registration No. TN 27 N 1510 owned by the appellant/transport corporation. The respondent/injured claimant preferred a claim before the Motor Accident Claims Tribunal, Principal District Judge, Namakkal for the injuries sustained by him as a result of the accident.

3. The Motor Accident Claims Tribunal, under the impugned award, dated 27.08.2012 passed in MCOP.No.20 of 2012, directed the Appellant/ transport corporation to pay the respondent/claimant a compensation of Rs.4,00,000/- together with interest and costs as detailed hereunder:

Sl.No.	Heads	Awarded by the Tribunal (Rs.)
1	For injuries	20,000/-
1	Permanent Disability	70,000/-
2	Pain and sufferings	24,000/-
3	Transportation	5,000/-
4	Extra nourishment	25,000/-
5	Loss of earning power	1,30,000/-
6	Medical expenses	1,26,000/-
	Total	4,00,000/-

4. Aggrieved by the impugned award passed by the Tribunal, the appellant/transport corporation has filed this appeal on the following grounds:-

a. They are not liable to compensate the claim, since only due to the negligence on the part of the respondent/claimant, he had sustained injuries. According to them, the respondent/claimant was travelling in the bus owned by the appellant/transport corporation and as seen from the contents of the FIR, which was marked as Ex.P1 before the Tribunal, it is clear that the cause for the injuries sustained by respondent/claimant was that a person inside the bus had pushed him. As a result of the pushing, he fell down from the bus, thereby, suffering injuries. Therefore, according to the appellant/transport corporation, they are not liable to compensate the claim of the respondent; and

b. The quantum of compensation awarded by the Tribunal under the impugned award is excessive.

5. Heard Mr.D.Venkatachalam, learned counsel for the appellant/transport Corporation and Mr.A.Lokesh, learned counsel for the respondent/claimant.

6. Before the Tribunal, the respondent/claimant has filed nine documents, which were marked as Exs.A1 to A9 and two witnesses were examined on his side, namely, Mr.Natarajan, father of the injured claimant/minor as PW1 as well as the Doctor (PW2), who examined the claimant and issued a disability certificate (Ex.A9). On the side of the appellant/transport corporation, one witness was examined, who is the driver of the bus as RW1, in which the respondent/claimant travelled and no document was filed before the Tribunal.

7. Before the Tribunal, in the claim petition, the respondent/claimant has pleaded that he was aged 16 years, at the time of the accident, doing his second year engineering course at Muthayammal Polytechnic College, Kakkaveri. According to him, on 30.08.2011, when he was travelling in the bus along with his father, he fell down from the bus due to rash and negligent driving by the driver of the bus. In the claim

petition, he has also pleaded that he had sustained the following injuries as a result of the accident:-

'i. Pelvic compression positive -cm would in posterior aspect of left hip with corrugated drain insitu.

ii. Grazed abrasion on entire posterior aspect of LS spine with degloving of skin of lower back abduction 30X18 cm. Movements of left hip are painful. Tenderness over left SI joint and public symphysis. active tow movements present right. Dorsils pedis felt. Moderate Contamination present in lacerated over posterior aspect of left hip.

iii. Left EHL/EDL-Grade 1. Sacral sensation present. Anal tone-good. Knee flexion cannot be examined due to pain as per would certificate.'

8. The contention of the appellant/transport corporation is that the FIR (Ex.A1) clearly reveals that there is no fault on the part of the driver of the bus as the FIR states that the respondent/claimant was pushed by some one inside the bus and as a result of the same, he fell down and sustained injuries. According to them, there is contradiction between the pleadings as contended in the claim petition and the evidence adduced by PW1, who is the father of the respondent/claimant and the contents of the FIR. According to the appellant/transport corporation, they cannot be made liable to compensate the claim of the respondent as there is no vicarious liability on their part.

9. Admittedly, the respondent claimant was a minor boy, aged 16 years at the time of the accident. FIR has been allegedly registered at the behest of the respondent/claimant, who is a minor. Admittedly, the father (PW1) of the respondent was also travelling along with the respondent/claimant in the same bus at the time of the accident. However, surprisingly, the father(PW1) has not given any complaint to the Police. As seen from the FIR (Ex.A1), which has been registered at the behest of minor boy, it is surprising to note that the minor boy himself has admitted to his guilt. It is highly unbelievable that too when the father of the minor boy was very much present in the scene of the accident. Therefore, the contents of the FIR cannot be given higher weightage than the pleadings as well as the oral evidence adduced before the Tribunal. The respondent/claimant as well as his father (PW1) have taken a consistent stand as seen from the claim petition as well as is the oral evidence adduced by PW1 that only due to the rash and negligent driving by the driver of the bus owned by the appellant/transport corporation, the respondent/claimant fell down from the bus, which resulted in injuries sustained by him. The driver of the bus, owned by the appellant/transport corporation, has also been examined as a witness before the Tribunal as RW1. This Court has also carefully perused and examined the deposition of RW1. Excepting for the statement made by RW1, the driver of the bus that he was not at fault and only due to the respondent's own negligence, the accident had happened, there is no other evidence placed by the appellant/transport corporation before the Tribunal to

disprove the contention of the respondent/claimant. Any adjudication of the Motor Accident claim is done on preponderance of probabilities. In the case on hand, admittedly, the FIR (Ex.A1), which the appellant is relying upon has been allegedly registered at the behest of the respondent, who was a minor, at the time of the accident. It is also an admitted fact that the father of the minor was also travelling in the same bus. But, the complaint, surprisingly, has not been given by the father but instead has been allegedly given by his son, who was a minor. No reasons have been assigned either in the FIR (Ex.A1) or in the evidence adduced by the appellant/transport corporation through the driver (RW1) as to why the FIR has been registered at the behest of a minor boy when his father was very much available in the scene of the accident. The Tribunal has rightly considered the evidence available on record and has come to the right conclusion based on preponderance of probabilities that the driver of the bus was alone responsible for the cause of the accident. Therefore, this Court is also not inclined to fix any contributory negligence on the part of the respondent/claimant as no evidence has been placed by the appellant/transport corporation to fix any contributory negligence on his part. Therefore, the first contention raised by the appellant/transport corporation with regard to their liability is rejected by this Court as the findings of the Tribunal are correct.

10. With regard to the second contention viz., the quantum of compensation awarded by the Tribunal is excessive, this Court is also rejecting the same for the following reasons:

a. The respondent/claimant has sustained the following injuries:

i. Pelvic compression positive -cm would in posterior aspect of left hip with corrugated drain insitu.

ii. Grazed abrasion on entire posterior aspect of LS spine with degloving of skin of lower back abduction 30X18 cm. Movements of left hip are painful. Tenderness over left SI joint and pubic symphysis. active tow movements present right. Dorsils pedis felt. Moderate Contamination present in lacerated over posterior aspect of left hip.

iii. Left EHL/EDL-Grade 1. Sacral sensation present. Anal tone-good. Knee flexion cannot be examined due to pain as per would certificate."

11. The nature of injuries sustained by the respondent/claimant has not been disputed by the appellant/transport corporation as seen from the evidence available on record. The Tribunal has awarded a total compensation of Rs.4,00,000/- to the respondent/claimant. The Doctor, who has assessed the disability of the respondent/claimant has issued a disability certificate (Ex.A9), which reveals that the respondent/claimant has sustained 70% disability. The Tribunal has awarded a disability compensation of Rs.70,000/- to the respondent/claimant calculated at

Rs.1000/- per percentage of disability. The Tribunal has also further awarded another sum of Rs.1,30,000/- towards loss of earning capacity to the respondent/claimant. Even though there is force in the contention of the appellant that the Tribunal cannot award compensation both for disability as well as for loss of earning capacity, this Court is of the considered view that if the Tribunal had considered the year of the accident, which was 2011, the total compensation awarded to the respondent/claimant will be more or less amounting to Rs.2,00,000/- which has been awarded by the Tribunal under the following heads:

- a. Disability compensation; and
- b. Loss of earning capacity

12. Therefore, this Court is not interfering with the compensation awarded by the Tribunal towards disability as well as loss of earning capacity in favour of the respondent/claimant. The Tribunal has also awarded another sum of Rs.5,000/- towards transportation, Rs.25,000/- towards extra nourishment charges, Rs.1,26,000/- towards reimbursement of medical bills and Rs.24,000/- towards pain and suffering, which in the considered view of this Court, is a just assessment.

13. The respondent/claimant has also filed the discharge summary issued by the hospital, which has been marked as Ex.A3 before the Tribunal, which reveals that he was admitted in the hospital for a long period of 21 days for his treatment. After giving due consideration for all these factors, this Court is of the considered view that the quantum of compensation awarded by the Tribunal under the impugned award cannot be considered to be excessive as alleged by the appellant/transport corporation.

14. Therefore, the second contention is also rejected by this Court. This Court is of the considered view that the grounds raised by the appellant/transport corporation in this appeal does not deserve any merit. Accordingly, this Appeal shall stand dismissed. सत्यमेव जयते

Conclusion:

15. The Appellant/Transport Corporation is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs to the respondent/claimant as assessed by the Tribunal, after deducting the amount, if any, already deposited to the credit of MCOP.No.20 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment.

16. On such deposit being made, since the respondent/claimant is a minor, the Tribunal shall deposit the amount along with accrued interest in interest bearing fixed deposit in any one of the Nationalised bank, till he attains majority. His father is permitted to withdraw the interest once in six months for the welfare of the minor, till he attains majority. If the minor attains the age of majority, it is open for him to file a formal petition before the Tribunal to declare him as a major.

17. In the result, this civil miscellaneous appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

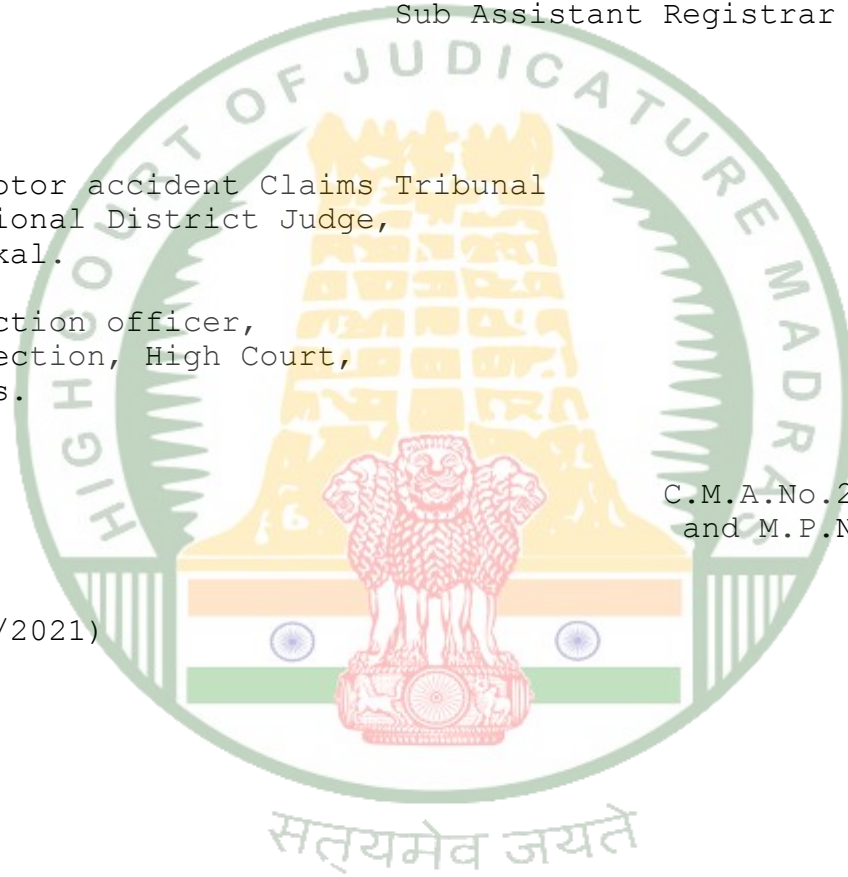
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To

1. The Motor accident Claims Tribunal
Additional District Judge,
Namakkal.
2. The Section officer,
V.R.Section, High Court,
Madras.

C.M.A.No.2754 of 2013
and M.P.No.1 of 2013

GMV (30/06/2021)



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