



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2334 OF 2014

Ravichandran

.. Appellant/Petitioner

Vs.

The Managing Director
Tami Nadu State Transport Corporation
Dharmapuri.

.. Respondent/Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2009 made in M.C.O.P.No.871 of 2007 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.K.Prasanna
for Mr.M.Sriram

For Respondent : Ms.P.Rajathi
for Mr.D.Raghu

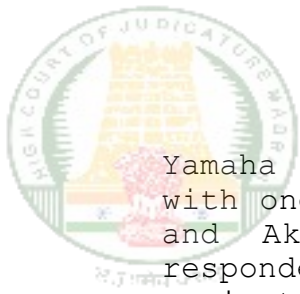
J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 25% contributory negligence on the part of the appellant as well as for enhancement of compensation granted by the Tribunal in the award dated 30.09.2009 made in M.C.O.P.No.871 of 2007 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No.871 of 2007 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri. The appellant filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.11.2004.

3.According to the appellant, on the date of accident, i.e., on 12.11.2004 at about 11.20 hours, while he was proceeding in



Yamaha motorcycle from Hosur to Kelamangalam Main Road along with one Baskar on the left side of the road between Manjalagiri and Akkondapalli, the driver of a bus belonging to the respondent drove the bus in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the accident, the appellant sustained grievous injuries all over the body and therefore, he filed the above claim petition claiming compensation as against the respondent.

4.The respondent/Transport Corporation filed counter statement denying the averments made by the appellant and stated that the driver of the bus drove the bus in a careful manner. The rider of the motorcycle alone rode the same in a rash and negligent manner in the middle of the road and dashed against the bus. The rider of the motorcycle did not possess driving license at the time of accident. The owner and insurer of the said motorcycle were not made as parties to the claim petition and hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the respondent/Transport Corporation is not liable to pay any compensation to the appellant. The respondent/Transport Corporation has also denied the age, income and injuries sustained by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition as against the respondent.

5.Before the Tribunal, the appellant examined himself as P.W.1, Dr.Ashok Kumar was examined as P.W.2 and seven documents were marked as Exs.P1 to P7. The respondent/Transport Corporation examined one Vadivel, the conductor of the bus as R.W.1, one G.Saravanan, the driver of the bus as R.W.2 and did not file any documents.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the rider of the motorcycle as well as the driver of the bus belonging to the respondent/Transport Corporation, fixed 25 : 75 contributory negligence on the part of the appellant as well as the driver of the bus belonging to the respondent, awarded Rs.1,05,000/- as compensation and directed the respondent to pay a sum of Rs.1,05,000/- as compensation to the appellant.

7.The appellant has come out with the present appeal challenging the portion of the award dated 30.09.2009 made in M.C.O.P.No.871 of 2007 fixing 25% contributory negligence on the part of the appellant as well as for enhancement of compensation.

8.The learned counsel appearing for the appellant contended that the accident has occurred only due to rash and negligent



WEB COPY

driving by the driver of the bus belonging to the respondent/Transport Corporation. The Tribunal failed to note that F.I.R. is registered against the driver of the bus and the driver of the bus did not lodge any complaint against the appellant. The Tribunal without considering the same erred in fixing 25% negligence on the part of the appellant on the ground that the appellant did not possess driving license at the time of accident. The learned counsel further contended that in the accident, the appellant sustained grievous injuries all over the body. P.W.2/Doctor examined the appellant and certified that the appellant suffered 40% disability. The Tribunal without any reason reduced the percentage of disability to 35% and awarded a meagre sum as compensation towards disability. The appellant was working in a private finance company and was earning a sum of Rs.6,000/- per month. Due to the injuries, the appellant could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method to award compensation towards loss of earning power. The appellant has marked the original bills as Ex.P5 to show that he has spent a sum of Rs.29,814/- towards medical expenses. The Tribunal without considering the same, erred in deducting the medical expenses and awarding only a sum of Rs.25,000/- towards medical expenses. The Tribunal has not awarded any compensation towards extra nourishment, transportation, mental agony, attendant charges and loss of amenities. The Tribunal awarded compensation along with interest at the rate of 6% per annum, which is meagre and prayed for setting aside 25% of the contributory negligence fixed on the part of the appellant and for enhancement of compensation.

9.At the time of arguments, Ms.P.Rajathi, the learned counsel representing Mr.D.Raghu, the learned counsel for the respondent/Transport Corporation on record, submitted that she has no objection to allow the appeal. The submission of the learned counsel appearing for the respondent/Transport Corporation is recorded.

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

11.From the materials on record, it is seen that it is the contention of the appellant that while he was proceeding in the motorcycle, the driver of the bus belonging to the respondent/Transport Corporation drove the bus in a rash and negligent manner, dashed against the motorcycle in which the appellant was travelling and caused the accident. To substantiate this, the appellant examined himself as P.W.1 and marked F.I.R. as Ex.P1 which was registered against the driver of the bus. On the other hand, it is the contention of the respondent that the rider of



the motorcycle alone rode the motorcycle in a rash and negligent manner, dashed against the bus and caused the accident. To substantiate this, the respondent examined the conductor of the bus as R.W.1 and the driver of the bus as R.W.2. It is pertinent to note that the driver of the bus did not lodge any complaint against the appellant. Though the respondent contended that the rider of the motorcycle did not possess driving license at the time of accident, they have not let in any documentary evidence to prove their contention. The Tribunal having rejected the evidence of R.W.1 and R.W.2, erred in fixing 25% contributory negligence on the part of the appellant. Therefore, finding of the Tribunal fixing 25% contributory negligence on the part of the appellant is liable to be set aside and is hereby set aside. The entire negligence is fixed on the respondent/Transport Corporation. The appellant is entitled to entire compensation awarded and the respondent is directed to pay entire compensation to the appellant.

12.As far as quantum of compensation is concerned, it is the contention of the appellant that in the accident, he suffered fracture of both bones in right forearm and multiple injuries all over the body. The appellant examined himself as P.W.1 and deposed to that effect. The Doctor was examined as P.W.2 to prove the nature of injuries. P.W.2/Doctor after examining the appellant, certified that the appellant has suffered 40% disability. P.W.2/Doctor has not deposed that the appellant suffered functional disability and lost his earning capacity. Hence, the appellant is not entitled to compensation by adopting multiplier method. The Tribunal reduced the percentage of disability assessed by PW2/Doctor to 35% on the ground that P.W.2/Doctor examined the appellant after four years of the accident. The said reason is not proper. The respondent did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and the disability assessed by him. Therefore, the appellant is entitled to compensation for 40% disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.80,000/- (Rs.2,000/- X 40%).

12(i).The appellant has produced Ex.P5/medical bills to show that he incurred a sum of Rs.29,814/- towards medical expenses. The Tribunal has awarded only a sum of Rs.25,000/- towards medical expenses without giving any reason for such reduction. The respondent has not disputed Ex.P5/medical bills. Hence, the appellant is entitled to a sum of Rs.29,814/- towards medical expenses, as per Ex.P5, claimed by the appellant.

12(ii).According to the appellant, he has taken treatment in Manipal Hospital, Bangalore, as in-patient from 12.11.2004 to 16.11.2004 and then, he has taken treatment as out-patient. The Tribunal has not awarded any compensation towards extra



nourishment, transportation, attendant charges, loss of amenities and damage to clothes. Hence, Rs.5,000/- each are awarded towards extra nourishment, transportation and attendant charges, Rs.10,000/- towards loss of amenities and Rs.1,000/- towards damage to clothes. A sum of Rs.10,000/- awarded by the Tribunal towards pain and suffering is just and reasonable and hence, the same is hereby confirmed. The Tribunal awarded compensation along with interest at the rate of 6% per annum, which is not proper. The appellant is entitled to compensation along with interest at the rate of 7.5% per annum. 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.	Disability	70,000	80,000	Enhanced
2.	Medical expenses	25,000	29,814	Enhanced
3.	Pain and suffering	10,000	10,000	Confirmed
4.	Extra nourishment	-	5,000	Granted
5.	Transportation	-	5,000	Granted
6.	Attendant charges	-	5,000	Granted
7.	Loss of amenities	-	10,000	Granted
8.	Damage to clothes	-	1,000	Granted
	Total	1,05,000	1,45,814	Enhanced by Rs.40,814/-

Though the Tribunal fixed 75% of the negligence on the part of the driver of the bus belonging to the respondent/Transport Corporation, in the conclusion of the judgment, directed the respondent/Transport Corporation to deposit entire amount awarded.

13. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,05,000/- is hereby enhanced to Rs.1,45,814/- together with interest at the rate of 7.5% per annum from the date of petition till the date



of deposit. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.40,814/- enhanced by this Court as per the order of this Court dated 25.07.2014 made in M.P.No.1 of 2013 in C.M.A.SR.No.73388 of 2013. The respondent/Transport Corporation is directed to deposit the 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 appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kj

To

1. The Additional District Judge
The Motor Accident Claims Tribunal
Krishnagiri.
2. The Section Officer
V.R.Section
High Court, Chennai.

+lcc to Mr.Mukund R.Pandiyar, Advocate, S.R.No.43084
+lcc to Mr.D.Raghu, Advocate, S.R.No.42802

C.M.A.No.2334 of 2014

MP (CO)
CS/27/08/2021
CS/31/08/2021