

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2937 of 2014

K.Kothandam

.. Appellant/Claimant

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Salai,
Chennai - 600 002.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.08.2012 made in M.C.O.P.No.1655 of 2009 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.C.Harish
for Mr.N.Manokaran

For Respondent : Dr.S.S.Swaminathan

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 10.08.2012 made in M.C.O.P.No.1655 of 2009 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.1655 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.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.02.2009.

4.According to the appellant, on 05.02.2009 at about 09.15 P.M., while he was waiting at Thiruvottiyur Mattu Manali Bus stop, a bus bearing Registration No.TN 01 N 5722 belonging to respondent-Transport Corporation coming from Parrys corner to

Manali, stopped at the bus stop by the driver. When the appellant tried to board the bus, the conductor without noticing the appellant, gave a whistle hurriedly to cross the railway gate and due to the same, the driver of the bus took the bus in a rash and negligent manner. Due to the said impact, the appellant fell down and sustained injuries. Therefore, the appellant filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation against the respondent-Transport Corporation.

5.The respondent-Transport Corporation filed counter statement and denied all the averments made by the appellant. According to respondent-Transport Corporation, on 05.02.2009 the respondent bus started its trip from Broadway to Manali new Town, near Railway Gate at Mattu Chandhai, the driver of the bus stopped the bus for alighting and boarding of the passengers at the bus stop. After alighting and boarding of the passengers at the bus stop, the bus moved and while proceeding near a speed brake, the appellant tried to board the moving bus, lost his grip, fell down and sustained injuries. Therefore, the appellant is solely responsible for the accident and the accident has not occurred as alleged by the appellant. The appellant also contributed negligence to the accident. The appellant has to prove his age, avocation, income, injuries and medical expenses incurred by him by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Mathiazhagan was examined as P.W.2 and 10 documents were marked as Exs.P1 to P10. On behalf of the respondent, one Venkatesan, Conductor of the respondent-Transport Corporation bus was examined as R.W.1 and no documentary evidence was let in.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that both the driver of the bus belonging to respondent-Transport Corporation and the appellant are responsible for the accident, fixed negligence in the ratio 75% : 25% and awarded a sum of Rs.1,42,000/- as compensation to the appellant and directed the respondent-Transport Corporation to pay a sum of Rs.71,000/- towards 50% of the award amount as compensation to the appellant.

8.Against the said order dated 10.08.2012 made in M.C.O.P.No.1655 of 2009, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing contributory negligence on the part of the appellant. The conductor of the bus without seeing

the passenger getting into the bus, blew the whistle and driver drove the bus in a rash and negligent manner, applied brake and caused the accident. R.W.1, the conductor of the bus has not witnessed the accident. The Tribunal erroneously relying on the said evidence, fixed contributory negligence on the part of the appellant. The rough sketch relied on by the Tribunal for fixing contributory negligence is not substantial evidence to come to the conclusion that appellant also contributed negligence to the accident. There is no evidence let in by the respondent-Transport Corporation to fix contributory negligence on the part of the appellant. He further contended that the appellant suffered fracture of bones at left leg proximal 1/3rd and has taken treatment at Government Stanley Hospital from 05.02.2009 to 06.04.2009. The Tribunal failed to award compensation for loss of earning capacity. The amounts awarded by the Tribunal towards transportation, extra nourishment, damages to clothes, medical expenses and pain and sufferings are meagre. The appellant was aged 55 years at the time of accident. The Tribunal ought to have awarded compensation for mental agony and physical discomfort and prayed for setting aside the portion of the award fixing contributory negligence on the part of the appellant and for enhancement of compensation.

10. Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that accident occurred only due to negligence on the part of the appellant as he tried to board the moving bus in a speed braker. The Tribunal ought to have fixed entire negligence on the part of the appellant and dismissed the claim petition. The appellant himself has given a complaint stating that he fell down from the bus. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

11. 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 available on record.

12. It is the contention of the appellant that when he about to board the bus, the conductor of the bus blew whistle and the driver started the bus in a rash and negligent manner and appellant fell down from the bus and sustained injuries. The appellant examined himself as P.W.1 and deposed about the manner of accident and injuries sustained by him. On the other hand, it is the contention of the respondent-Transport Corporation that when the moving bus was slowing down at a speed braker, the appellant tried to board the bus, fell down and sustained injuries. The respondent-Transport Corporation examined the conductor of the bus as R.W.1 to substantiate this contention. The Tribunal considering the F.I.R., which was registered

against the appellant based on the complaint given by him and rough sketch which showed that the accident occurred at a speed braker, held that appellant was responsible for the accident and fixed contributory negligence on the appellant. The Tribunal further contended that driver of the bus ought to have been careful while driving the bus. Based on the above materials, the Tribunal fixed 75% negligence on the part of the driver of the bus belonging to respondent-Transport Corporation and 25% contributory negligence on the part of the appellant. There is no error in the said finding of the Tribunal.

13.From the award of the Tribunal, it is seen that in the concluding paragraph, the Tribunal held that the appellant also contributed 50% negligence to the accident and directed the respondent-Transport Corporation to pay 50% of the compensation awarded. Considering the entire materials on record, the said portion of the award alone is modified directing the respondent-Transport Corporation to pay 75% of the compensation awarded by the Tribunal.

14.As far as quantum of compensation is concerned, the Tribunal considering the evidence of appellant as P.W.1, P.W.2/Doctor and documents filed, awarded compensation under different heads, which are not meagre and hence the same are confirmed.

15.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,42,000/- is hereby confirmed 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 75% of the award amount, i.e., Rs.1,06,500/- 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.1655 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 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. No costs.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

krk

To

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

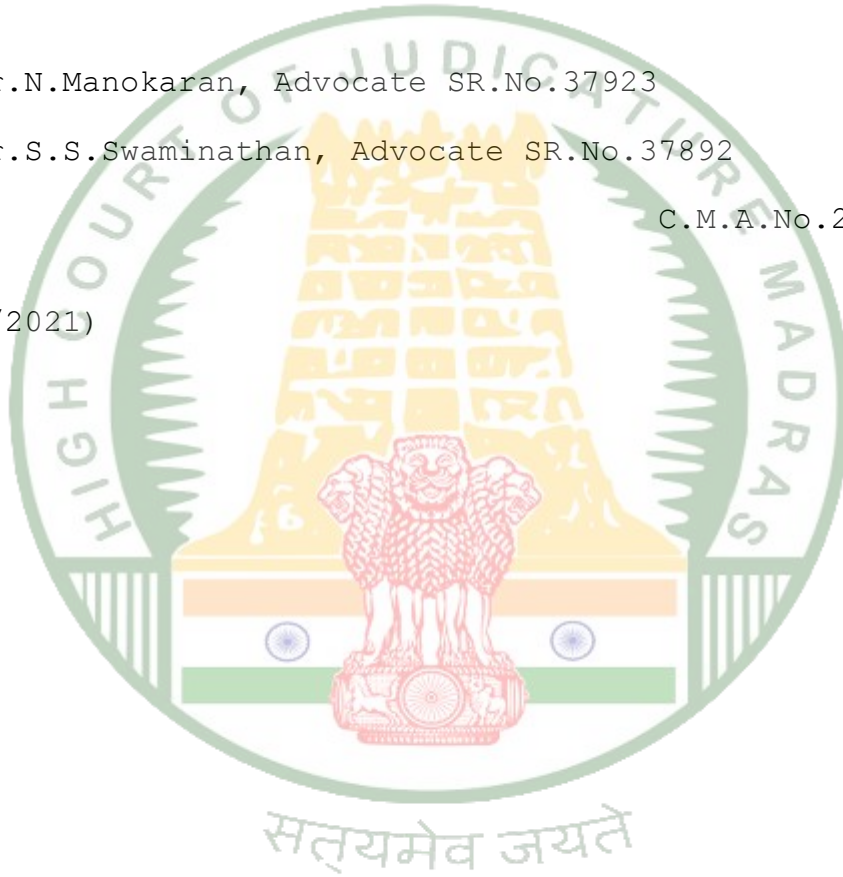
2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.37923

+1cc to Dr.S.S.Swaminathan, Advocate SR.No.37892

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MG (CO)
GMY (05/05/2021)



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