

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1767 of 2017

P.Karthikeyan

... Appellant/Claimant

(amended as per order in M.P.No.488 of 2012
Dated 31.01.2012)

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram, Kanchipuram Region,
(Amended as per order in M.P.No.1106/13
Dated 02.04.2013)

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.02.2015 made in M.C.O.P.No.4338 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 05.02.2015 made in M.C.O.P.No.4338 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.4338 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.10.2007.

Page numbers

3. According to the appellant, on 10.10.2007 at about 04.30 P.M., while he was getting into the front side of the respondent-Transport Corporation bus bearing Registration No.TN 21 N 0849 at Valliammai College Bus Stop on GST Road, Kattankulathur, the driver of the bus suddenly took the bus and due to the same, the appellant fell down from the bus and the bus ran over his left leg and his left leg above knee was amputated. At the time of accident, the appellant was aged 20 years and was a DEEE student. Therefore, he filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation against the respondent-Transport Corporation.

4. The respondent-Transport Corporation filed counter statement and denied various averments made by the appellant. According to the respondent-Transport Corporation, on 10.10.2007 while the driver of the bus bearing Registration No.TN 21 N 0849 belonging to the respondent-Transport Corporation was driving the bus on Chengalpet - Tambaram road at a moderate speed and when he was about to stop the bus at Thailapuram Bus Stop, the appellant who was travelling at the foot board of the bus, fell down from the bus due to glitch in holding the handle. Due to the same, his leg was fractured and got admitted in the hospital. In spite of the precaution /alert by the Driver and Conductor of the bus to the passengers including the appellant who was travelling in the foot board of the bus to come inside the bus, the appellant did not respond fell down from the bus and invited the accident. Therefore, the respondent-Transport Corporation bus is not responsible for the accident and the respondent-Transport Corporation is not liable to pay any compensation to the appellant. The appellant has to prove his age, avocation, income, nature of injuries and period of treatment taken 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.

5. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.J.R.R.Thiagarajan as P.W.2 and 7 documents were marked as Exs.P1 to P7. On behalf of the respondent-Transport Corporation, the Driver of the respondent-Transport Corporation bus was examined as R.W.1 and no documents were marked.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that both the appellant as well as the Driver of the bus belonging to respondent-Transport Corporation are equally responsible for the accident and fixed negligence in the ratio 50% : 50% and directed the respondent-Transport Corporation to pay a sum of Rs.2,00,000/- towards 50% of the award amount as compensation to the appellant.

Page numbers

7.Challenging the portion of the award fixing 50% contributory negligence on the part of the appellant and for enhancement of compensation, the appellant has come out with the present appeal.

8.The learned counsel for the appellant contended that the Tribunal ought to have fixed entire negligence on the part of the driver of the bus belonging to the respondent-Transport Corporation based on the evidence of the appellant since no independent witness was examined except the evidence of the driver of the bus to prove the negligence on the part of the appellant. The Tribunal erred in fixing 50% negligence on the part of the appellant on the basis of Ex.P3/AR copy of the accident, wherein it has been stated that while the appellant was travelling on foot board of the bus, the appellant slipped and fell down from the bus and the bus run over his legs. Fixing 50% negligence on the part of appellant on the basis of Accident Register is not correct when the same was not admitted by the appellant as he was unconscious at the time of admission. The Tribunal ought to have awarded compensation towards loss of earning. The Tribunal failed to award any amount towards future medical expenses and loss of earning capacity. The amounts awarded by the Tribunal under the different heads are meagre and prayed for setting aside 50% contributory negligence fixed on the part of the appellant and for enhancement of compensation.

9.Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the appellant was travelling in the foot board of the bus and fell down due to his negligence in spite of the driver and conductor of the bus requesting all the passengers to come inside and not to travel in the foot board. The appellant travelled in the foot board, he slipped and fell down and therefore, he is solely responsible for the accident. The appellant has continued his studies and there is no loss of studies and there is no loss of earning also. The Compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for setting aside 50% negligence fixed and for enhancement of compensation and prayed for dismissal of the appeal.

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

Page numbers

11.It is the contention of the appellant that while he was getting into the bus in the front entrance, the driver of the bus belonging to the respondent-Transport Corporation suddenly started the bus in a rash and negligent manner and the appellant fell down from the bus and suffered injuries. On the other hand, it is the contention of the respondent-Transport Corporation that the appellant was travelling in the foot board and inspite of request made by the driver and conductor to come inside the bus, he slipped and fell down and sustained injuries. In the accident register, Ex.P3/AR copy issued by Sri Ramachandra Hospital, it is mentioned that the appellant slipped and fell down while travelling in the foot board of the bus. The contention of the appellant that he did not give such statement to the doctor as he was unconscious, is not acceptable. Immediately, after the accident he was admitted in Sri Ramachandra Hospital and according to the appellant, he took treatment for three days in Sri Ramachandra Hospital and also taken treatment in Government General Hospital, Chennai as in-patient from 13.10.2007 to 16.11.2007 and Ex.P3/AR copy of Sri Ramachandra Hospital, is as follows:

''While travelling on foot Board of a bus, slip and fall ran over his legs by bus at around 4.30 p.m on 10.10.2007 near Valliammal College near Potheri: no loc/ENT bleed Pt. was initially treated at SRM hospital, O/C:- patient conscious, oriented: BP:90/60; HR:-130/min, RR-16/min; SPO2-100% on R.A.''

In Ex.P3/AR copy issued by Sri Ramachandra Hospital, Doctor has recorded that the appellant was ''oriented '' and it is not mentioned that he was ''unconscious''. Considering all the above materials, the finding of the Tribunal that the appellant has also contributed 50% negligence for the accident does not warrant any interference by this Court and the same is hereby confirmed.

12.As far as quantum of compensation is concerned, it is the contention of the appellant that his left leg above knee was amputated. He examined Dr.J.R.R.Thiagarajan as P.W.2 to prove the injuries. P.W.2 doctor as well as Rehabilitation center assessed disability of the appellant as 80%. The tribunal accepting the same, fixed a sum of Rs.3,000/- per percentage of disability and awarded a sum of Rs.2,40,000/-(80% x Rs.3,000/-) towards disability. The appellant has not proved that he suffered functional disability and could not continue his studies due to the injuries. Therefore, the percentage method adopted by the Tribunal is proper and the appellant is not

Page numbers

entitled to compensation by adopting multiplier method. The Tribunal has not awarded any compensation towards fixation of artificial leg. Hence, a sum of Rs.1,00,000/- is awarded towards fixing artificial leg. 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
1.	Transportation	10,000/-	10,000/-	Confirmed
2.	Extra nourishment, damage and miscellaneous expenditure	25,000/-	25,000/-	Confirmed
3.	Damage to clothes	500/-	500/-	Confirmed
4.	Attendant charges	5,000/-	5,000/-	Confirmed
5.	Medical Expenses	23,500/-	23,500/-	Confirmed
6.	Disability	2,40,000/-	2,40,000/-	Confirmed
7.	Pain and suffering and trauma	50,000/-	50,000/-	Confirmed
8.	Loss of amenities	50,000/-	50,000/-	Confirmed
9.	Fixation of artificial leg	--	1,00,000/-	Granted
	Total	Rs.4,04,000/- Tribunal arrived at Rs.3,99,000/-	Rs.5,04,000/-	Enhanced by Rs.52,000/-
	50% of award amount	Rs.1,99,500/- rounded off to Rs.2,00,000/-	Rs.2,52,000/-	

Though the Tribunal has arrived at a sum of Rs.4,04,000/- as compensation erroneously awarded a sum of Rs.3,99,000/- as compensation.

Page numbers

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,99,000/- is hereby enhanced to Rs.5,04,000/- 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 50% of the enhanced award amount now determined by this Court i.e. Rs.2,52,000/- 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.4338 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced 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. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vsn

To

1.The V Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section,
High Court, Chennai.

+2cc to Mr.K.Varadha Kamaraj, Advocate SR.15713

+1cc to Mr.K.J.Siva Kumar, Advocate SR.16339

C.M.A.No.1767 of 2017

VBA (CO)

CB(04/01/2021)

Page numbers