

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 4725 & 4888 of 2019
and C.M.P. No. 28088 of 2019

C.M.A.No. 4725 of 2019

G. Gopalakrishnan ... Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai 600 002. Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.01.2019, made in M.C.O.P.No. 8733 of 2015, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. V. Balamurugan

For Respondent : Mr. S. Sivakumar

C.M.A.No. 4888 of 2019

The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai 600 002. Appellant

Vs.

G. Gopalakrishnan ... Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 21.01.2019, made in M.C.O.P.No. 8733 of 2015, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. S. Sivakumar

For Respondent : Mr. V. Balamurugan

C O M M O N J U D G M E N T

C.M.A. No. 4725 of 2019 is filed for enhancement of the compensation and C.M.A. No. 4888 of 2019 is filed against the award dated 21.01.2019, directing the respondent to pay compensation made in M.C.O.P.No. 8733 of 2015, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.By consent of both the parties, the appeal is taken up for final disposal at the admission stage itself.

3.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petition.

4.The claimant filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.11.2014.

5.According to the claimant, on the date of accident viz., 10.11.2014, when he was boarding the Bus bearing Registration No. TN01-N-5184, belonging to the respondent-Transport Corporation at the Mint bus stand, the driver of the bus without noticing the on-boarding claimant, moved the bus rashly and negligently. The claimant fell down and sustained injuries and hence, filed the present claim petition, claiming compensation.

6.The respondent-Transport Corporation filed counter statement and denied the involvement of the bus in the accident. According to the respondent, the driver of the Transport Corporation drove the bus with due care and caution, observing traffic rules and regulations. The respondent-Transport Corporation came to know about the accident only on receipt of notices and hence, they are not liable to pay any compensation.

7.Before the Tribunal, the claimant examined himself as P.W.1 and examined Dr. K.J. Mathiazhagan as P.W.2 and marked 13 documents as Exs.P1 to P13. On the side of the respondent-Transport Corporation, the driver of the bus was examined as R.W.1 and one document was marked as Ex.R1.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due

to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and directed the respondent to pay a sum of Rs.3,12,000/- as compensation to the claimant.

9. Against the said award dated 21.01.2019, made in M.C.O.P. No. 8733 of 2015, the respondent-Transport Corporation has filed C.M.A. No. 4888 of 2019 and claimant has filed C.M.A. No. 4725 of 2019 for enhancement of the compensation.

10. The learned counsel appearing for the respondent-Transport Corporation contended that the bus belonging to the respondent was not involved in the accident and respondent came to know about the alleged accident only when they received notices. The alleged place of accident is inside the bus stand during the peak hours and it is not possible to drive the bus in a rash and negligent manner inside the bus stand. If really had the claimant fell down from the bus while trying to board the bus, the passengers would not have let the bus proceed further. The Tribunal failed to consider the evidence of R.W.1, driver of the bus who was acquitted in the criminal case lodged against him based on the FIR. The Tribunal failed to properly appreciate the acquittal of the driver of the bus. Even assuming the case of the claimant is admitted, the claimant has himself submitted that while he was attempting to claim the bus, the driver suddenly moved the bus at the Mint bus stand. In view of such admission, the Tribunal ought to have fixed 75% contributory negligence on the part of the claimant. In any event, the compensation awarded by the Tribunal is excessive. The claimant has not made out any case for enhancement of the compensation and prayed for setting aside the award of the Tribunal and dismissal of C.M.A. No. 4725 of 2019, filed by the claimant.

11. Per contra, the learned counsel appearing for the claimant contended that due to rash and negligent driving by the driver of the bus, the claimant fell down and sustained injuries. The FIR is registered against the driver of the bus and charge sheet was also lodged against the driver of the bus. The claimant as P.W.1 has deposed and proved that accident has occurred only due to rash and negligent driving by the driver of the bus. At the time of accident, the claimant was working as Metal Polishing and Dye Maker and was earning a sum of Rs.15,000/- per month. He was aged 42 years at the time of accident. The sum of Rs.10,000/- fixed by the Tribunal as monthly income is meagre. In the accident, the claimant sustained Type VI schatzkers fracture in Tibial plateau, crush injury in left knee with compartment syndrome. The claimant examined P.W.2-Doctor who has deposed that the claimant has suffered 45% disability. The Tribunal without any basis, reduced the percentage of disability to 30%. The Tribunal ought to have

awarded compensation for 45% disability at the rate of Rs.3,000/- per percentage. The Tribunal has not awarded any amount towards loss of earning capacity. The amounts awarded by the Tribunal towards attendant charges, loss of earning, transportation and extra nourishment are meagre and prayed for enhancement of the compensation and dismissal of the C.M.A. No. 4888 of 2019, filed by the respondent.

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

13. The contention of the claimant is that when he was trying to board the bus, the driver of the bus suddenly moved the bus and claimant had fell down and sustained injuries. The accident has occurred inside the Mint bus stand. From the materials on record, it is seen that FIR is registered against the driver of the bus and also charge sheet is filed against him. But the driver of the bus is acquitted in the criminal case. It is well settled that contents of the FIR, charge sheet or proceedings in the criminal case cannot be the basis for fixing negligence. The Tribunal has to independently consider the materials let in before it to fix the negligence. In the present case, it is the case of the claimant that due to rash and negligent driving by the driver of the bus, the accident has occurred and he suffered injuries. On the other hand, it is the case of the respondent that the bus in question was not involved in the accident. To substantiate the same, the respondent examined the driver of the bus as R.W.1. The Tribunal while considering the evidence of claimant as P.W.1 and evidence of the driver of the bus as R.W.1, took into account the FIR which is lodged against the driver of the bus. Even though the contents of the FIR or criminal proceedings are not binding on the Tribunal, the Tribunal can take into account the FIR and judgment in the criminal Court along with other materials placed before it for consideration. The reason given by the Tribunal for fixing negligence on the part of the driver of the bus is not erroneous warranting interference by this Court.

14. As far as the quantum of compensation is concerned, the claimant has stated that he was working as Metal Polishing and Dye Maker and was earning a sum of Rs.15,000/- per month. He has not produced any material to prove his avocation and income. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.10,000/- as monthly income of the appellant. The accident is of the year 2014. The monthly income fixed by the Tribunal is correct. The Tribunal considering the evidence of P.W.2- Doctor, has held that P.W.2-Doctor is not the Doctor who treated the claimant. The Tribunal considering the evidence of P.W.2, the nature of injuries, held that the disability assessed

by P.W.2-Doctor cannot be considered with reference to whole body and reduced the percentage of disability to 30% and awarded compensation at the rate of Rs.3,000/- per percentage. Considering the entire materials on record, this Court fixes the disability of the claimant as 40% and a sum of Rs.1,20,000/- is awarded towards disability, by awarding a sum of Rs.3,000/- per percentage. The learned counsel appearing for the claimant contended that the claimant has taken treatment as in-patient at Stanley Medical College Hospital, Chennai from 10.11.2014 to 06.12.2014 and has continued treatment as out-patient for more than a year. His entire knee is crushed. The amounts awarded by the Tribunal towards attendant charges is meagre. Considering the nature of injuries and contention of the learned counsel appearing for the claimant, the amount awarded by the Tribunal towards attendant charges is enhanced to Rs.25,000/- from Rs.17,000/-. The Tribunal has awarded a sum of Rs.50,000/- towards loss of earning for a period of five months. Considering the nature of injuries and the period of treatment taken, the amount awarded by the Tribunal towards loss of earning is meagre, as the claimant would not have worked for atleast 12 months. Hence, the amount granted towards loss of earning is enhanced to Rs.1,20,000/- (Rs.10,000/- x 12 months), by awarding a sum of Rs.10,000/- for 12 months. The Tribunal has awarded excessive amounts for damages for pain, suffering and trauma and loss of amenities. In view of the same, the amounts awarded under other heads are not enhanced, but 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.	Loss of earning	50,000/-	1,20,000/-	Enhanced
2.	Attendant charges	17,000/-	17,000/-	Confirmed
3.	Medical expenses	10,000/-	10,000/-	Confirmed
4.	Disability	90,000/-	1,20,000/-	Enhanced
5.	Loss of amenities	50,000/-	50,000/-	Confirmed
6.	Damages for pain, suffering and trauma	75,000/-	75,000/-	Confirmed

7.	Transportation & nourishing food	20,000/-	20,000/-	Confirmed
	Total	3,12,000/-	4,12,000/-	Enhanced by Rs.1,00,000/-

15. In the result, C.M.A. No. 4725 of 2019 is partly allowed and C.M.A. No. 4888 of 2019 is dismissed and the amount awarded by the Tribunal at Rs.3,12,000/- is enhanced to Rs.4,12,000/- along with interest and costs. The respondent-Transport Corporation is directed to deposit the enhanced 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, to the credit of M.C.O.P.No. 8733 of 2015. On such deposit, the claimant is permitted to withdraw the award amount, along with interest and costs. Consequently, connected Civil Miscellaneous Petition is closed. The claimant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,00,000/-. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+1cc to Mr.V.Balamurugan, Advocate Sr.1424
+1cc to Mr.S.Sivakumar, Advocate Sr.1119

C.M.A. Nos. 4725 & 4888 of 2019

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srg 01/12/2020