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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.2653 of 2007
and
CMA No.1599 of 2008
and
M.P.No.1 of 2008, 1 of 2009
and
CMP 19766 of 2018

In CMA No.2653 of 2007

Sivaprakasam

...Appellant/Claimant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.
Dharmapuri.

...Respondent/Respondent

Vs.

In CMA No.1599 of 2008

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.
Dharmapuri.

...Appellant/Respondent

Vs.

Sivaprakasam

...Respondent/Claimant

Prayer in both the appeals: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act against the order passed in MCOP No.98 of 2004 dated 13.11.2006 by the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

CMA 2653 of 2007

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.D.Raghu for T.N.S.T.C.



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CMA 1599 of 2008

For Appellant : Mr.D. Raghu for T.N.S.T.C.

For Respondent : Mr.P.Jagadeesan

COMMON JUDGMENT

The appellant in CMA No.2653 of 2007 is the claimant in MCOP No.98 of 2004 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Dharmapuri and the appellant in CMA No.1599 of 2008 is the respondent in the above MCOP.

2. For the sake of convenience, the parties herein are referred to as per their ranking in the MCOP No.98 of 2004.

3. The claimant has filed the above said MCOP seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road accident that took place on 22.05.2003.

4. The case of the claimant is as follows.

On 22.05.2003, at 7.40 a.m. while the claimant, who was working as a conductor in the respondent Corporation was going to the Cash Counter of the Krishnagiri Depot to pay the amount, a bus bearing registration No.TN-29-N-0950 was started by a driver and was moved reverse in a rash and negligent manner and hit the claimant, thereby he sustained grievous injuries and he was admitted to Krishnagiri Government Hospital and thereafter, he took treatment in a private hospital. According to the claimant, the rash and negligent act of the driver of the bus was the cause of accident, and since the respondent corporation is the owner of the bus, they are liable to pay compensation to the claimant.

5. The respondent resisted the claim petition by filing counter affidavit.

6. Before Tribunal, on the side of the claimant, the claimant and one Dr.Thiruvengadam were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P7 were marked and on the side of the defendant, three witnesses were examined as RW1 to RW3 and no documentary evidence was adduced on their side.

7. After analysing the evidence on record, the Tribunal had awarded a sum of Rs.1,53,442/- under various heads, as extracted here under.



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Heads	Amount in Rs.
Transportation charges	1,000
Extra nourishment	2,000
Medical expenses	86,590
Pain and sufferings	20,000
Loss of amenities	25,000
Loss of happiness	25,000
Permanent Disability (45x1000)	45,000
Total	2,04,590
After deducting 25% for Contributory negligence	1,53,442

8. Aggrieved over the Award passed by the Tribunal, the claimant has filed the appeal in CMA No.2653 of 2007 to enhance the compensation, whereas, the respondent has filed the appeal in CMA No.1599 of 2008 to scale down the compensation.

9. The learned counsel appearing for the claimant submitted that the findings of the Tribunal clearly shows that the negligence is only on the part of the driver of the bus and there is no evidence to prove that the negligence on the part of the claimant is also the cause of accident. He further submitted that only on presumption, the Tribunal had erroneously fixed 25% contributory negligence on the part of the claimant, which is unfair and without considering the facts and circumstances of the case and the documents filed by the claimant, the Tribunal has awarded very meager amounts as compensation and hence, the same is liable to be enhanced.

10. The learned counsel appearing for the respondent/Tamil Nadu State Transport Corporation Limited submitted that the accident was occurred only due to the negligence of the claimant and he had not suffered any grievous injuries and the compensation of Rs.25,000/- each towards " Loss of comfort" and " Loss of Happiness" is an excessive and therefore, the orders passed by the Tribunal is liable to be set aside.

11. To reply the same, the learned counsel appearing for the claimant submitted that the claimant had sustained grievous injuries and in view of the same, he was unable to continue his work as conductor. He further submitted that pending appeal, the claimant had filed a writ petition in W.P.No.17858 of 2008 before this court to direct the respondent to refer the claimant to the Medical Board to ascertain as to whether he is physically fit to carry out the work as conductor and to consider his request for alternate duty and this court by its order dated



04.08.2008, has directed the respondent to consider the request of the claimant and pass orders. He also submitted that based on the above said order, the claimant was referred to the Medical Board and after getting report from the Medical Board, the respondent Corporation has allotted the alternative duty to the claimant as "Assistant" on 02.12.2009. However, from the date of accident i.e. on 22.05.2003 till 01.12.2009, he lost his work and therefore, the above said period may be ordered as duty period and also prayed to enhance the compensation.

12. Heard the learned counsel appearing for the claimant and the learned counsel appearing for the respondent. I have also perused the entire materials on record.

13. Now the point for determination is

(i) Whether the Award passed by the Tribunal is just and reasonable or not ?

(ii) Whether the fixation of 25% contributory negligence on the part of the claimant is just and reasonable?

14. Point No.1

The claimant was examined as PW1 and he has given evidence with regard to his disability. The Doctor Thiruvengadam was also examined as PW2 who gave Disability Certificate Ex.P6 in which, he assessed the disability suffered by the claimant as 45%. Hence, by taking into consideration the above said evidence of PW1, PW2 and the "Disability Certificate" Ex.P6, the Tribunal has fixed the permanent disability suffered by the claimant as 45% and by awarding a sum of Rs.1000/- per percentage, granted a sum of Rs.45,000/- towards "Permanent Disability". The above said compensation does warrant any interference by this court. Further, the Tribunal has also given cogent reasons for awarding compensation of Rs.2,000/- towards "Extra Nourishment" and Rs.20,000/- towards "Pain and sufferings. The compensation of Rs.25,000/- each towards "Loss of Amenities and Loss of Happiness" and Rs.1,000/- towards "Transportation Charges" is also just and fair. Therefore, this court is of the view that the compensation awarded by the Tribunal is just and reasonable and it is not on the higher side, as stated by the Tamil Nadu State Transport Corporation Limited. Hence, the contention of the respondent that without any documents, the Tribunal has awarded huge amounts as compensation cannot be accepted and the point is answered accordingly.

15. Point No.2.

The Tribunal has fixed 25% contributory negligence on the part of the claimant. The Tribunal has clearly discussed that



no evidence was adduced to show that while starting and moving the bus by reverse, the driver of the bus was acted with utmost care and caution and hence the cause of accident was due to the negligence on the part of the driver of the bus. Further, The Tribunal has clearly stated that there is no oral or documentary evidence to prove the negligence on the part of the claimant to cause accident. However, without any basis, the Tribunal has simply come to the conclusion that the claimant is also responsible for the accident and fixed 25% contributory negligence on the part of the claimant, which is unacceptable. Therefore, the findings of the Tribunal by fixing 25% contributory negligence on the part of the claimant is set aside. The point is answered accordingly. As far as the non working period from 22.05.2003 to 01.12.2009 is concerned, it is for the claimant to work out is remedy before the appropriate forum, as per law.

16. In the result,

(i) The appeal in CMA No.2653 of 2007 is partly allowed and the findings of the Tribunal by fixing 25% contributory negligence on the part of the claimant is set aside. No costs. Connected miscellaneous petitions are closed.

(ii) The appeal in CMA No.1599 of 2008 is dismissed. No cost. Connected miscellaneous petition is closed.

(iii) The respondent/ Tamil Nadu State Transport Corporation is directed to deposit a sum of Rs.2,04,590/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, within a period of 12 weeks from the date of receipt of a copy of this order, less the amount if already deposited.

(iv) On such deposit being made by the respondent, the claimant is at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mst



To

Motor Accidents Claims Tribunal,
The Additional District Judge,
Dharmapuri.

Copy To

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

+2cc to Mr.D.Raghu, Advocate, S.R.No.3733 and 3735

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.4074

CMA No.2653 of 2007 and
CMA No.1599 of 2008
M.P.No.1 of 2008, 1 of 2009
and CMP 19766 of 2018

NMI (CO)
RGA (04/10/2021)