



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.3.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3187 of 2012

Karthick ... Petitioner / Appellant
..Vs..

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House,
Chennai - 600 002. ... Respondent/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 23.12.2010 made in M.C.O.P.No.264 of 2007 on the file of Addl. District & Sessions Judge (F.T.C.No.1) (Motor Accidents Claims Tribunal), Poonamallee.

For Appellant : Mr.K.Varadhakamaraj
For Respondent : Mr.K.Moorthy

JUDGMENT

Brief facts of the claimant's case is as follows:

On 3.1.2007 at about 4.30 p.m. when the petitioner was travelling as a passenger in M.T.C. bus bearing registration No.TN-01-N 2468 in Sembarambakkam bus stop, the driver driven the bus in a rash and negligent manner as a result, the petitioner was pull down over through from the foot board of the bus in front of the Tassi Godown, thereby the petitioner sustained grievous injuries. The petitioner has filed a claim petition claiming Rs.2,97,200/- as compensation from the sole respondent for the injuries sustained by him.

2. The respondent Transport Corporation defended the claim petition. The respondent denied the averments made in the claim petition and stated that when the bus was moving inspite of repeated request and warning of the Conductor, the victim was travelling by hanging in the backside entrance, lost his balance, fell down and sustained injuries. In the F.I.R. itself it is stated that the victim is responsible for the accident as he was travelling by hanging in foot board and therefore, the petitioner is responsible for the accident. The respondent Transport Corporation is not liable to pay compensation to the petitioner.



3. Before the tribunal, on the side of the claimant, P.W.1 and 2 were examined, Ex.P1 to P11 and M.O.1 were marked. On the side of the respondents, R.W.1 was examined and no document was marked.

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4. The Tribunal, based on the oral and documentary evidence, has fixed 50% contributory negligence on the part of the claimant, arrived a sum of Rs.79,208/- as total compensation and awarded Rs.39,604/- as compensation for the injuries sustained by the petitioner along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Compensation awarded by the tribunal in Rs.
Medical expenses	24,208/-
Transport to hospital	5,000/-
Extra Nourishment	5,000/-
Pain and sufferings	5,000/-
Loss of future amenities for his disability	40,000/-
Total :	79,208/-

4. Challenging the award passed by the tribunal, the claimant has preferred the present appeal mainly on the ground that the tribunal has wrongly fixed contributory negligence on the part of the appellant. According to the appellant, the tribunal has fixed 40% disability for the injuries sustained by the appellant and awarded a sum of Rs.79,208/- as compensation. However, the appellant has not disputed the quantum of compensation awarded by the tribunal. The only issue raised in the instant appeal is that the tribunal has wrongly fixed contributory negligence on the part of the appellant and the same is liable to be set aside. According to the learned counsel appearing for the appellant, the appellant has filed a claim petition under Sec.163-A of Motor Vehicle Act. It is useful to extract Section 163-A of Motor Vehicles Act hereunder:

'Special provisions as to payment of compensation on structured formula basis:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised Insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the



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victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.''

5. According to the learned counsel appearing for the appellant, as per Section 163-A of M.V. Act, the tribunal cannot fix contributory negligence on the part of the petitioner. He also relied on the decision of this Court in LAKSHMI & ANOTHER VS. METROPOLITAN TRANSPORT CORPORATION LTD., CHENNAI-2 [2011 (1) TN MAC 410] wherein this Court dealt with an identical issue and held that under Section 163-A, claimant not required to plead or establish negligence. Even if victim contributed to accident, Transport Corporation is liable for accident as the section covers cases where even negligence is on the part of victim. In the aforesaid decision this Court held as under:

'14. In this connection, the learned Single Judge of this Court has followed the decision of the Supreme Court in the identical matter in C.M.A.No.1450 of 2003 dated 28.6.2010, the relevant portion of which is extracted here under:

"Further, it is to be noted that in the first line of the judgment, it is stated that "the petition is filed under Section 163-A of Motor Vehicles Act". But the Tribunal disregarded all the above factors and proceeded as, though the claim petition was filed under Section 163-A of the Act, awarded compensation under Section 166 of the Act. As per Section 163-A of the Act, negligence aspect need not be taken into consideration. The Supreme Court in the case of DEEPAL GIRISHBHAI SONI AND OTHERS VS. UNITED INDIA INSURANCE CO. LTD., reported in (2004 ACJ 934), has considered the scope of Section 163-A and 166 of the Act and held as follows:

"The provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in



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force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of".

Following the principles enunciated in the above judgment, the Tribunal is wrong in going into the issue of contributory negligence. Therefore, the said judgment squarely applies to the facts of the present case and it is held that the claimants are entitled to the compensation of Rs.3,27,000/- with interest at 9% per annum from the date of petition. The finding that there is contributory negligence on the part of the claimant is set aside. In respect of the award, there is no serious dispute. Therefore, the claimant is entitled to the compensation of Rs.3,27,000/- with interest at 9% per annum as worked out by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs."

15. When the petition is filed under Section 163 A of the Motor Vehicles Act, the Tribunal cannot go into the issue of contributory negligence and the findings of contributory negligence on the part of the claimants have to be set aside.

16. In this case, the lower Court though has stated that the accident was caused as stated in the claim petition and the claimants are entitled for compensation, it has failed to consider the fact that the petition was filed under Section 163-A of the Act, but not under Section 166 and reduced the compensation by 50%. The finding in so far as the contributory negligence is therefore set aside. The quantum awarded by the Court below is reasonable and it is hereby confirmed."

6. Thus, on the facts of the case on hand, reducing 50% negligence on the part of the driver of the respondent Corporation bus cannot be sustained and the same is liable to be set aside. In so far as the quantum of compensation, the award passed by the tribunal is confirmed.



Corporation shall deposit the entire compensation before the tribunal along with interest at the rate of 7.5% p.a. from the date of claim petition till realisation to the credit of M.C.O.P.No.264 of 2007 on the file of the Additional District & Sessions Judge (F.T.C.No.1) (Motor Accidents Claims Tribunal), Poonamallee, less the amount already deposited, within a period of 12 weeks from the date of receipt of copy of the judgment. On such deposit being made by the respondent/Transport Corporation, the appellant shall withdraw the same by filing appropriate application.

8. In fine, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

Vaan

To

1. The Addl. District & Sessions Judge
(F.T.C.No.1) (Motor Accidents Claims
Tribunal), Poonamallee.
2. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Chennai - 600 002.
3. The Section Officer,
V.R.Section, Madras High Court,
Chennai-104.

+1cc to Mr.K.Moorthy, Advocate, S.R.No.21530

+1cc to the Government Pleader, S.R.No. 20836

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BP(CO)
GN(28/10/2021)