

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 06.07.2022

Delivered On : 05.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.90 of 2019

The Managing Director

Tamil Nadu State Transport Corporation,

Karaikudi.

.. Appellant / Respondent

Vs.

Vellaichamy

.. Respondent / Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.137 of 2013, dated 13.04.2018, on the file of the Motor Accident Claims Tribunal / Additional District and Special Court, Pudukkottai.

For Appellant

: Mr.P.Prabhakaran

For Respondent

: Mr.G.Mathavana

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.137 of 2013, dated 13.04.2018, on the file of the Motor Accident Claims Tribunal / Additional District and Special Court, Pudukkottai.

The appellant herein is the respondent and the respondent herein is the claimant in the original claim petition.

2. Brief substance of the petition, in M.C.O.P.No.137 of 2013, is as follows :-

On 06.04.2012, at about 05.45 pm., the petitioner was riding his two wheeler bearing Registration No.TN-55-W-8553 with his sister as a pillion rider along the Pudhukottai – Trichy road, in a slow and steady manner, keeping the extreme left side of the road. At that time, a bus bearing Registration No.TN-63-N-1488, driven by its driver in a rash and negligent manner, dashed against the two wheeler. The petitioner sustained injuries. The petitioner claimed a sum of Rs.5,00,000/- as compensation.

3. Brief substance of the counter filed by the respondent, in M.C.O.P.No.137 of 2013, is as follows:-

The bus was driven by its driver in a slow and cautious manner, on 06.04.2012, at about 5.45 pm., more than 5 two wheelers came from the opposite direction in a rash and negligent manner, the bus driver applied brake and turned the bus on the left side. At that time, the petitioner came in a rash and negligent manner, he lost the balance, dashed on the right back side of the

bus. Negligence of the claimant is the reason for the accident. The petitioner is not entitled to claim any compensation. The petitioner has to prove the manner of the accident. The owner of the two wheeler and the Insurance Company of the two wheeler are necessary parties to the case. The age of the petitioner, nature of injuries, mode of treatment are all to be proved.

4. On the side of the petitioner, 1 witness was examined and 7 documents were marked. On the side of the respondent, 1 witness was examined and no document was marked. The Tribunal awarded a sum of Rs. 3,40,500/- as compensation.

5. Against the order, the appellant preferred this appeal on the following grounds :

The Tribunal has failed to fix the entire negligence on the injured, who drove the two wheeler in a rash and negligent manner. It was the two wheeler, which dashed on the rear portion of the right side body of the appellant's bus and the claimant invited the accident. The award is excessive. A verification of the medical bills reveals that an excess sum of Rs.55,581/- was awarded towards medical expenses and the same has to be deducted. The award under various heads all also excessive.

6. On the side of the appellant, it is stated that the claimant could not control the two wheeler, while crossing the road. The Doctor was not examined and the disability was not proved. Only wound certificate alone was filed. Grievous injury is not a sufficient ground to award compensation. The claimant has to prove the disability.

7. On the side of the respondent, it is stated that examination of the Doctor is not necessary. Wound certificate itself is sufficient enough to prove that the claimant sustained injury and prayed the appeal to be dismissed.

8. FIR was registered against the bus driver. Copy of the FIR was marked as Ex.P1. The claimant was having a valid driving licence, at the time of accident. Ex.P6 was the copy of the driving licence of the claimant. The Tribunal has fixed the liability on the bus driver. The same is reasonable.

9. The claimant sustained injury in the accident. Wound certificate was marked as Ex.P3. In Ex.P3, it is stated that the claimant sustained grievous injury. There was a fracture on the right thigh bone, but, no disability certificate was marked on the side of the claimant. Doctor was not examined. But, for the grievous injury, the Tribunal has awarded Rs.1,00,000/- as compensation,

which is very excessive. Without any proof of disability, the amount fixed by the tribunal is excessive. Hence, the amount is reduced to Rs.50,000/-. The Tribunal has awarded Rs.1,27,500/- towards medical expenses. On the side of the appellant, it is stated that the calculation is wrong and an excess sum of Rs.55,581/- was awarded and the same has to be reduced. As per Ex.P5, Rs.91,453.70 has been spent as medical expenses. Ex.P4 is a portion of Ex.P5. Hence, it is decided that the claimant is entitled to Rs.91,453/- towards medical expenses.

10. The amount towards pain and sufferings (Rs.50,000/-) is excessive and the same is reduced to Rs.30,000/- for loss of amenities, the claimant is entitled to Rs.15,000/-. The compensation is calculated as follows:-

For grievous injury	: Rs. 50,000/-
For Pain and sufferings	: Rs. 30,000/-,
For loss of amenities	: Rs. 15,000/-,
For extra nourishment	: Rs. 5,000/-,
For transport expenses	: Rs. 5,000/-,
For attender charges	: Rs. 15,000/-.
For medical expenses	: Rs. 91,453/-
Total Compensation	 : Rs.2,11,453/-

11. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.3,40,500/- to Rs.2,11,453/-.

(ii) The appellant - Transport Corporation, is directed to deposit the entire compensation of Rs.2,11,453/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. Excess amount, if any, shall be refunded to the Transport Corporation.

(iii) On such deposit being made by the Transport Corporation, the respondent / claimant is permitted to withdraw the entire amount with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

05.08.2022

Index : Yes/No

Internet : Yes/No

Ls

Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal /
Additional District and Special Court,
Pudukkottai

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R. THARANI, J.

LS

Pre-delivery Judgment made in
C.M.A.(MD)No.90 of 2019

05.08.2022