



C.M.A. No. 1428 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1428 of 2021

L. Thangavel

... Appellant / Respondent

Vs.

Tamil Nadu State Transport Corporation Ltd.,
No.37, Mettupalayam Road,
Coimbatore,
Coimbatore District - 641043.

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 24.09.2019 made in M.C.O.P. No. 801 of 2016 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Namakkal.

For Appellant : Mr. R. Nalliyappan

For Respondent : Mr. Sundaravadanam

JUDGMENT



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This Civil Miscellaneous Appeal has been filed by the claimant against the Judgment and decree made in M.C.O.P. No. 801 of 2016, dated 24.09.2019 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Namakkal, seeking enhancement of compensation.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the claimants is that on 07.04.2016 at about 3:15AM, the claimant was travelling in the TNSTC bus bearing Registration No.TN-33-N-2548 on Palani to New Tharapuram Road and that the driver of the bus drove the bus in a rash and negligent manner and when the bus was nearing R.R. I.T.I, the driver of the TNSTC bus lost his control over the bus and hit against a tamarind tree on the extreme left side of the road and resulted in accident. Due to this, the claimant has sustained multiple injuries all over his body and immediately taken to Government Hospital, Palani and subsequently, taken to Government Hospital, Salem and then to Vinayaka Mission Hospital, Salem for further treatment. A criminal case was also registered against the TNSTC bus driver in Cr.No.321/2016 U/s.279, 337 of



I.P.C. on the file of Palani Nagar Police Station at Dhindugal district. Due to injuries sustained, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.10,00,000/- along with interest under section 166 of the Motor Vehicles Act.

4. The respondent - Transport Corporation has filed a counter and denied the manner in which the accident has taken place and denied the rash and negligent driving on the part of the TNSTC bus driver bearing Registration No.TN-33-N-2548 caused the accident. The Transport Corporation has stated that when the bus was proceeding near Puliampatty four roads, a lorry came in the opposite direction in a rash and negligent manner and in order to avoid a collision against the lorry, the driver has turned the bus to the left side of the road, which resulted in dashing against the tamarind tree. The respondent - Transport Corporation also contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, a common award was passed in M.C.O.P. Nos.801 and 805 of 2016 and common evidences were marked. On the side



of the claimant, he himself examined as P.W.1 and Exs.P.1 to P.15 were marked and on the side of the respondent, the conductor of the bus was examined as R.W.1 and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1 has held that the rash and negligence on the part of the driver of the TNSTC bus bearing Registration No.TN-33-N-2548 is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.40,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization for the claimant herein and directed the respondent - Transport Corporation to pay the compensation.

7. Aggrieved over the award of the Tribunal, the claimant has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimant has submitted that the Tribunal without any reason has refused to award compensation under the head disability in spite of marking medical records such as



accident register and discharge summaries issued by the Vinayaka Mission Hospital, Salem, which are marked as Ex.P.2 and Ex.P.3 respectively and treatments undergone by the claimant. The learned counsel also contended that the compensation awarded under other heads is also on the lower side, hence prays to enhance the same.

9. Per contra, the learned counsel appearing for the respondent - Transport Corporation has submitted that the claimant has not produced any evidence or documents to show that he sustained disability during the accident, hence the Tribunal has not awarded compensation under the head disability and further contended that the injuries sustained by the claimant is a simple injury, hence prays to confirm the award of the Tribunal.

10. Heard the submission made on both sides and perused the materials available on record:

11. In this case, the major contention raised by the claimant is that the Tribunal has not awarded compensation under the head disability. The Ex.P.3, discharge summary and Ex.P.2, Accident Register shows the nature



of injuries sustained and the treatment undergone by the claimant. The claimant has not separately examined any witness or produced any documents for proving his disability. The Ex.P.2, Accident Register issued by the Government Hospital, Palani shows that the claimant has sustained fracture in the left leg and crush injury in right little finger. Whereas the Ex.P.3, discharge summary issued by the Vinayaka Mission Hospital, Salem shows that the claimant was sustained amputation of his right little toe, which does not corroborate with the Accident Register.

12. The Tribunal has also not accepted the discharge summary issued by the Vinayaka Mission Hospital, Salem on the ground that since the entries are made in a small notebook and held that the same could not be accepted as evidence since the discharge summary issued by a private Medical College Hospital will not be in such form. To corroborate the claimant's case, he has not examined any doctor from the said Vinayaka Mission Hospital, Salem and to prove the authenticity of the discharge summary.

13. This Court vide its order in C.M.A. No.1428 of 2021, dated



07.11.2023 has also ordered the claimant herein to subject himself before the Medical Board for assessing his disability, but it is reported by the learned counsel for the claimant that the claimant was not in a position to examine himself before the Medical Board. Considering all the above facts, this Court is of the view that based on the available records, the Tribunal has not awarded compensation under the head disability to the claimant. The Ex.P.3 - discharge summary has been issued in small note book which is not carrying any authorised seal or name of the Doctor who has given treatment to him. The hospital in which he has undergone treatment is an Medical College Hospital and in the absence of any other corroborative material, and the fact that there is a discrepancy between the injury mentioned in the accident register, this Court is inclined to confirm the finding of the Tribunal.

14. With regard to quantum of compensation under other heads are concerned, the Tribunal has awarded Rs.30,000/- towards pain and suffering, Rs.4,500/- towards loss of income during the treatment period, Rs.3,000/- towards transportation expenses and Rs.2,500/- towards extra nourishment. This Court finds no infirmity in the award of the Tribunal and hence, the same are hereby confirmed. This Court finds no merit in the



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appeal of the claimant and accordingly, the appeal is dismissed and the award of the Tribunal is confirmed.

15. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

20.12.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.

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

K. RAJASEKAR, J.



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