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C.M.A. Nos.957 and 1099 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. Nos.957 and 1099 of 2019

K.Arul ... Appellant in CMA No.957 of 2019

N.Vijayan ... Appellant in CMA No.1099 of 2019

Vs.

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
(Kancheepuram Region)
Kancheepuram ... Respondent in both CMAs

Common Prayer: This Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.12.2016 made in MACT O.P. Nos.388 of 2014 and 6635 of 2013, on the file of the IV Judge, Motor Accident Claims Tribunal (Small Causes Court), Chennai.

In both CMAs.

For Appellant : Mr.C.Munusamy

For Respondent : Mr.S.S.Santhosakumar



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J U D G M E N T

This Civil Miscellaneous Appeals are filed against the Judgment and Decree dated 23.12.2016 made in MACT O.P. Nos.388 of 2014 and 6635 of 2013, on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai.

2. In both the appeals, the appellant is the claimants and the respondent is the owner of the bus involved in the accident.

3. The case of the claimants is that on 16.09.2013 at about 03.50 a.m., the claimants were travelling as a Conductor and passenger respectively in TNSTC bus bearing Regn. No.TN-21-N-1642 along G.S.T. Road, from south to north direction, opposite to Jeyaraman Rice Shop. At that time, the driver of the said bus, who drove the bus in a rash and negligent manner, endangering to the public safety and without noticing the stationed Lorry, dashed against the back side of the Lorry bearing Regn. No.TN-21-U-1009 due to which, the claimants sustained grievous injuries.



4. Since the accident had occurred due to the rash and negligent driving of the driver of the bus, the claimants filed separate claim petitions in MCOP No.388 of 2014 and MCOP No.6635 of 2013, before the Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai, against the respondent herein who is the owner of the said bus, claiming compensation of Rs.30,00,000/- each for the injuries sustained by them in the accident and thereby, he is not able to work as before the accident. The claimant in MCOP No.388 of 2014 namely K.Arul, in his claim petition had stated that at the time of accident, he was aged 35 years and was working as a bus Conductor and earning Rs.15,000/- per month. Due to the accident, he sustained head injury, multiple Rib Fracture-Righ Side, Mild Pheumothorax of right side, crush injury on left knee, fracture of both bone in left leg, compount comminuted fracture of left femur, Right Clavicle, Fracture and Scapular Fracture and multiple injuries all over the body. The claimant in MCOP No.6635 of 2013 namely N.Vijayan, in his claim petition had stated that at the time of accident, he was aged 47 years and was working as a Tailor and earning Rs.1,000/- per day and due to the accident, he sustained head injury, fracture of left hand, fracture of left femur, fracture of left side hip and left ribs (8 Nos.), amputation of left hand 3 fingers and multiple injuries all over the body and thereby, he is not able to work as before the accident.



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5. Since both the claims arose out of a same accident, both the claim petitions were taken together and common order was passed by the Tribunal.

6. In order to substantiate the claims before the Tribunal, on the side of the claimants, 4 witnesses were examined as P.W.1 to P.W.4 and 34 documents were marked as Ex.P1 to Ex.P.34. On the side of the respondent, one witness was examined as R.W.1.

7. The Tribunal after hearing the arguments on either side and considering the materials, fixed the liability on the respondent and awarded compensation of Rs.10,18,300/- (including interim award passed if any) to the claimant in MCOP No.388 of 2014 with future interest at 7.5% per annum (except for Rs.20,000/- awarded towards future medical expenses) from the date of filing of the petition i.e. 24.01.2014, till the date of realization with costs. Further, the Tribunal awarded compensation of Rs.7,53,900/- to the claimant in MCOP No.6635 of 2013 with future interest at 7.5% per annum (except for Rs.15,000/- awarded towards future medical expenses) from the date of numbering of the petitioner i.e. 08.01.2013 till the date of



realization and with costs.

8. Challenging the Award passed by the Tribunal, the claimants have filed the present appeals for enhancement of compensation.

9. The learned counsel for the appellants in both the appeals submitted that the accident had occurred only due to the rash and negligent driving of the driver of the respondent's bus. Insofar as the claimant in MCOP No.6635 of 2013 namely N.Vijayan is concerned, was working as a Tailor and due to the accident, he sustained injuries as stated above and he lost 3 of fingers in his left hand. The doctor/P.W.4 has assessed his percentage of disability 100% partial permanent and 28% permanent disability whereas, the Tribunal has fixed only 11% towards functional disability and 50% towards partial permanent disability without any reason. Insofar as the claimant in MCOP No.388 of 2014 namely K.Arul is concerned, he was working as a Conductor. Though the doctor/P.W.3 has assessed his disability at 70% partial and permanent, the Tribunal has fixed only 25% as functional disability. The Tribunal, without any reason, adopted the percentage of disability on its own and failed to consider the evidence of the Medical Officer and also the medical records. Therefore, the Awards passed by the Tribunal



does not reflect the “just compensation” and the same are liable to be enhanced.

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10. The learned counsel for the respondent/Transport Corporation submitted that the accident had not occurred due to the rash and negligent driving of the driver of the respondent's bus. At the time of accident, a two wheeler which was coming in the opposite direction, was about to hit the bus and therefore, in order to avoid hitting the two wheelr, the driver of the bus turned bus and inspite of his best effort, the bus dashed behind a punctured Lorry which was stationed without signal. Therefore, the accident had not occurred due to the negligent of the driver of the bus and hence, the respondent is not liable to pay any compensation. Even otherwise, the Tribunal has awarded exorbitant compensation and it does not reflect the “just compensation”. Therefore, there is no need for enhancement. Hence, the appeals are liable to be dismissed.

11. Heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials available on record.

12. The accident is not in dispute. The manner of accident is also not in dispute. At the time of accident, both the claimants were travelling in



the said bus and due to the accident, they both sustained grievous injuries as stated above which is also not disputed. The claimants alone have filed appeals for enhancement of compensation.

13. Though the Tribunal fixed the liability on the respondent/Transport Corporation holding that the accident had occurred only due to the rash and negligent driving on the part of the driver of the bus, the respondent/Transport Corporation has not filed any appeal. Therefore, as an appellate Court, this Court finds that the findings of the Tribunal with regard to liability, is not in dispute. Therefore, this Court confirms that the respondent/Transport Corporation is liable to pay the compensation.

14. The main contention of the learned counsel for the claimants is that due to the accident, the claimants sustained grievous injuries. The doctor/P.W.3 assessed the disability of the claimant N.Vijayan at 100% partial permanent disability and 28% permanent disability. Though the Tribunal accepted the injuries, erred in fixing the functional disability at 11% and partial permanent disability at 50%. The claimant Vijayan was working as a Tailor and due to the accident, he sustained grievous injuries and undergone a surgery on his left thigh and leg for the crush injury. He also lost



his middle and ring finger and his index finger was shortened. His leg was also shortened. Therefore, he was not in a position to continue his Tailoring work. Insofar as the claimant Arul is concerned, he was working as a Conductor. Due to the accident, he sustained grievous injuries as stated above and his left leg got affected severely. Even after better and prolonged treatment, he was not in a position to do his normal work for his livelihood. Though the doctor/P.W.4 assessed the disability at 70% partial and permanent, the Tribunal has fixed only 25% as functional disability. The Tribunal ought to have fixed 100% disability to the claimants as proved by medical records and that the Tribunal has not given any reason for rejecting the disability certificate issued by the doctors.

15. Admittedly, the disability certificates were not issued by the Medical Board and it has been issued by the doctors who have actually not given any treatment to the claimants and they have also not stated that after the accident and treatment, the claimants are not in a position to work as they were doing before the accident. To take the disability at 100%, there should be some evidence to show that the injured cannot do any work as he was doing before the accident. The claimants have failed to prove the same and the doctors have also not given any clear evidence on what basis, they arrived to the percentage of disability. Therefore, in the absence of the same, the



Tribunal rightly fixed disability as stated above and awarded the compensation by adopting multiplier method.

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16. This Court does not find any perversity in the appreciation of evidence by the Tribunal. In the absence of any clear proof and medical records, this Court finds that the Awards passed by the Tribunal, reflect the “just compensation”. Therefore, there is no merits in the appeals and the same are liable to be dismissed.

17. Accordingly, the Civil Miscellaneous Appeals are dismissed.

There shall be no order as to costs.

20.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

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

2.The Section Officer,
VR Section, High Court, Madras.



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P.VELMURUGAN. J.

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