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C.M.A. No. 2927 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2927 of 2021

K. Elumalai

... Appellant / Petitioner

Vs.

1. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai - 600 002.

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 28.01.2020 passed in M.C.O.P. No. 3736 of 2015 on the file of the Principal Special Judge (under E.C & NDPS Act), Motor Accident Claims Tribunal, Chennai.

For Appellant : M/s. K. Varadhakamaraj

For Respondent : M/s. M. Murali Vinodh



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JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant challenging the dismissal of claim petition in M.C.O.P. No. 3736 of 2015, dated 28.01.2020 on the file of the Principal Special Judge (under E.C & NDPS Act), Motor Accident Claims Tribunal, Chennai.

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

3. The case of the claimant is that, on 07.12.2014, at about 20:00 hours, while he was walking in Sathyamoorthi Nagar main road opposite to 44th Block from East to West direction, a MTC bus bearing Registration No.TN-01-N-7947 driven by its driver in a rash and negligent manner came from South to North, hit on the claimant, causing grievous injuries. A criminal case was registered in Cr.No.305/P3/2014 on the file of G3 Kilpauk Traffic Investigation Police Station. For the injuries sustained, the claimant has filed this claim petition seeking compensation for a sum of Rs.15,00,000/- under section 166 of the Motor Vehicles Act.



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4. The respondent – Transport Corporation filed a counter and contended that the bus driver has driven the bus with due care and caution, the accident has taken place only due to the negligence on the part of the claimant, who has suddenly entered of the road, who was standing as a pedestrian, on seeing this, the driver of the bus had stopped the bus, but the claimant's right leg was slipped by a small stone on the road and lost his balance and hit on the bus, thereby, invited the accident. The Transport Corporation also disputed the age, income, occupation, injuries and disability sustained by the claimant and contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, the claimant himself examined as P.W.1 and the Doctor, who examined the claimant was examined as P.W.2 and through them Exs.P.1 to P.11 were marked. On the side of the respondent, the driver of the MTC bus was examined as R.W.1 and no exhibits were marked.



6. After appreciating the evidences placed on record, more particularly Ex.P.3 – Accident Register and Ex.P.4 – discharge summary, the Tribunal has held that it is the case, that the claimant while getting down from the bus has fell down and he was under the influence of alcohol at the time of occurrence, hence there is no negligence on the part of the driver of the bus and the respondent – Transport Corporation is not liable to pay any compensation to the claimant and thereby rejected the claim petition filed by the claimant herein.

7. Aggrieved over the dismissal of claim petition, the claimant has filed this appeal to set aside the award of the Tribunal and to grant compensation.

8. The learned counsel appearing for the claimant submitted that the entries in the Ex.P.3- Accident Register has been made by the Medical Officer of the Casualty on the information given by the person, who has taken the claimant to the hospital and that person was not examined before the Tribunal and submitted that the claimant was not conscious and in fit state of mind, while admitted in the hospital, hence he could not have given



information, regarding the manner in which the accident was taken place.

The learned counsel further submitted that the reliance made by the Tribunal based on the Accident Register is not proper and other connected records shows that the claimant has sustained grievous head injury, hence he was not in fit state of mind to state the manner in which the accident has taken place, however, the respondent has also admitted the fact that the accident was taken place, while the claimant was crossing the road, hence prays to set aside the award of the Tribunal and to grant compensation to the claimant.

9. Per contra, the learned counsel for the Transport Corporation submitted that the Tribunal after careful examination of the entries made in the Accident Register and based on the evidences placed on record, which corroborates the fact that the claimant has sustained self injury, hence the Tribunal held that the claimant is not entitled to claim any compensation, hence prays to dismiss the appeal.

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



11. The major contention raised by the claimant is that, the entries made in the Ex.P.3- Accident Register alone is not sufficient to consider the case of the claimant, since the Ex.P.3, was recorded by the Casualty Doctor based on the information given by a person, who has admitted the claimant after the accident. On perusal of Ex.P.3, it has been recorded that the claimant has sustained injuries, while getting down from the bus and it is silent about the person, who has brought the claimant to the hospital, since, in the medico-legal cases, the person, who admits the injured has to be recorded. The Ex.P.4 – discharge summary, shows that the claimant was under the influence of alcohol at the time of occurrence and states that the claimant has sustained head injury, which is warranted, taking CT scan of the brain and surgery was conducted on his head.

12. The evidence of R.W.1 – driver of the bus, shows that he admits the case of the claimant that while claimant crossing the road, he has sustained injuries, but it is not the respondent case that the claimant fell down from the bus accidentally, under the influence of alcohol. This evidence of R.W.1, supports the case of the claimant that the accident was taken place only when the claimant was crossing the road.



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13. In view of the facts, that the name of the person, who has brought the claimant at the time admitting him in the hospital is not mentioned and also there is no mentioning regarding about the orientation and state of mind of the claimant in the Accident Register and the evidence of R.W.1, which corroborates the case of the claimant, this Court is of the view that the reliance placed on the Accident Register is not proper and the Tribunal ought to have appreciated the case of the claimant, more particularly considering the evidences of P.W.1 and R.W.1.

14. In the cross examination of P.W.1, it is elicited that the claimant was crossing the road, which is not pedestrian area earmarked for crossing the road and he has suddenly crossed the road and came opposite to the bus. Similarly, in the cross examination of R.W.1, it is elicited that the accident was taken place in the market area and busy road, where there was a speed brake near the place of occurrence, hence the bus was driven only in low speed. The evidence of P.W.1 shows that he has entered into the middle of the road, and invited the accident. After the accident, the claimant was immediately admitted in the Railways Hospital for first aid.



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15. There is no evidence placed on record to show that the claimant was fell down from the bus under the influence of alcohol and invited the accident. However, on perusal of the evidence of R.W.1, it shows that on seeing the claimant, who was waiting to cross the road, he has applied horn and warned the claimant to stop, however the accident had taken place. This Court is of the view that, having seen the injured, who was waiting to cross the road, he could have taken extra care and he has not applied brake, even after the injured entered into the road.

16. Ex.P.2 - Rough sketch shows that the accident was taken place on the left hand side of the road, and the place of occurrence is a market area and the road is having a width of 40 feet on each direction of the road. If the driver of the bus has driven the bus in the middle of the road, he could have avoided the accident. Ex.P.4 - discharge summary shows that the claimant was under the influence of alcohol at the time of occurrence. Considering all the above aspects, this Court is of the view that both the claimant and the driver of the bus are responsible to the accident in the ratio



of 50:50, hence this Court is inclined to fix the contributory negligence of 50% to the claimant.

17. With regard to quantum of compensation is concerned, the claimant was examined by P.W.2 - Doctor, who has assessed the disability of the claimant as 35% permanent disability and stated that the claimant has sustained head injury such as Left Frontal contusion, Lt. Fronto temporo Parietal Sub Dural Hematoma, Occipital Bone fracture and also Decompressive Craniotomy and Evacuation of Extradural Hematoma and Cranioplasty. Considering the above injury, this Court is of the view that the disability assessed by the Doctor is acceptable. Considering the date of accident, this Court is inclined to grant Rs.4,000/- per percentage of disability and accordingly, Rs.1,40,000/- (4,000/- X 35% disability) is awarded as compensation under the head disability.

18. Ex.P.4 - discharge summary shows that the claimant was admitted in the I.C.F. Hospital on 07.12.2014, undergone surgery on 11.12.2014 and discharged on 23.12.2014, further he was undergone in-patient treatment from 02.02.2015, undergone surgery on 04.02.2015 and



discharged on 12.02.2015 and again from 23.04.2015 to 25.04.2015. This shows the gravity of injuries sustained and the claimant has undergone continuous treatment. Considering the nature of injuries, period of treatment and date of accident, this Court is of the view that the claimant is entitled to two months loss of income for his treatment period and fixing Rs.10,000/- as his monthly income is proper. Accordingly, this Court is inclined to award Rs.20,000/- (10,000/- X 2) as compensation under the head loss of income during the treatment period, Rs.50,000/- towards pain and suffering, Rs.15,000/- towards attender charges, Rs.20,000/- towards extra nourishment and Rs.5,000/- towards transportation expenses and Rs.25,000/- towards loss of amenities.

19. Since the claimant has taken his entire treatment in Railways Hospital, no medical bills were adduced on the side of the claimant and also the injuries sustained by the claimant have been healed and there is no necessity for future treatment, this Court is not inclined to award compensation under the head medical and future medical expenses.



20. Accordingly, the compensation awarded under various heads by this Court is as follows:

S.No	Description	Compensation awarded (Rs)
1.	Disability	1,40,000/-
2.	Loss of income during the treatment period	20,000/-
3.	Pain and Suffering	50,000/-
4.	Transportation Charges	5,000/-
5.	Extra Nourishment	20,000/-
6.	Attender Charges	10,000/-
7.	Loss of amenities	25,000/-
	Total	2,70,000/-
	Deduction of 50% towards Contributory negligence	1,35,000/-
	Total Compensation	1,35,000/-

21. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by this Court is **Rs.1,35,000/- [Rupees One Lakh and Thirty Five Thousand only]** together along with interest at the rate of **7.5% per annum** from the date of filing of Claim Petition till the date of realization, excluding the default period, if any. The Respondent - Transport Corporation is directed to deposit the amount awarded by this Court along with interest and costs, within a period of six weeks from the



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date of receipt of a copy of this judgment to the Savings Bank account of the claimant. On such deposit, the claimant/ appellant herein is permitted to withdraw the award amount determined by this Court along with interest and costs. Since this Court has awarded the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the compensation awarded. There shall be no order as to cost in the present appeal.

05.01.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal Special Judge,
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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