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Civil Miscellaneous Appeal Nos.2881 of 2023 and 1608 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CMA Nos.2881 of 2023 and 1608 of 2024
and CMP No.27022 of 2023

Civil Miscellaneous Appeal No.2881 of 2023

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan House,
Chennai 600 002

... Appellant

Vs.

K.Lakshmiah @ Lakshmanan,
Sri Harikotta Road,
Doducial Magistrate Court,
Sullurpet,
Nellore District

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 14.02.2023 made in MCOP No.2543 of 2002 on the file of Motor Accident Claims Tribunal, Court of IV Small Causes Court at Chennai.

Civil Miscellaneous Appeal No.1608 of 2024



Civil Miscellaneous Appeal Nos.2881 of 2023 and 1608 of 2024

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K.Lakshmiah @ Lakshmanan,
Sri Harikotta Road,
Doducial Magistrate Court,
Sullurpet,
Nellore District

... Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan House,
Chennai 600 002

..Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to against the decree and judgement dated 14.02.2023 made in MCOP No.2543 of 2002 on the file of Motor Accident Claims Tribunal, Court of IV Judge, Small Causes Court at Chennai.

For Appellant

in CMA No.2881 of 2023

and for respondent in

CMA No.1608 of 2024 : Mr.Anton Dhanasekaran

For Respondent

in CMA No.2881 of 2023

and for Appellant in

CMA No.1608 of 2024 : M/s.S.Suriyaprakash

COMMON JUDGMENT



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The Transport Corporation and the claimant have filed these appeals against the award passed by Motor Accident Claims Tribunal, Court of IV Small Causes Court at Chennai in in MCOP No.2543 of 2002 dated 14.02.2023.

2. The Transport Corporation has filed CMA No.2881 of 2023 questioning the award passed by the Tribunal mainly on the ground of negligence attributed against the driver of the bus belonging to the Transport Corporation. The claimant has filed CMA No.1608 of 2024 seeking for enhancement of compensation.

3. The case of the claimant is that on 23.02.2000, he was standing at Gangadheeswaran Koil street and at about 9.10 hours, the bus belonging to the transport Corporation was driven in a rash and negligent manner and it hit the claimant. As a result of which, the claimant fell down and sustained crush injury on the left foot ankle. The claimant underwent treatment initially in the Government Hospital and thereafter, in a private hospital. The disability certificate was issued by the Medical board of the Government Hospital, Nellore to the effect that the claimant



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sustained 30% disability. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

4. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the bus belonging to the Transport Corporation.

5. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.64,500/- under various heads as follows

:-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Medical expenses	Rs.5,000/-
2.	Transportation charges	Rs.5,000/-
3.	Extra Nourishment	Rs.5,000/-
4.	Attender charges	Rs.5,000/-
5.	Loss of Income due to disability	Rs.20,000/-
6.	Partial loss of income	Rs.19,500/-
7.	Pain and sufferings	Rs.10,000/-



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
	Total	Rs.64,500/-

6. The above compensation was directed to be paid by the Insurance company with interest at the rate of 7.5% per annum.

7. The Transport Corporation and the claimant have filed the above appeals questioning the award passed by the Tribunal.

8. Heard Mr.Anton Dhanasekaran, learned counsel for Insurance company and M/s.J.Micheal Visuvasam, learned counsel for claimant.

9. This Court carefully considered the submissions made on either side and the materials available on record.

10. This Court also carefully went through the award passed by the Tribunal.

11. The first ground to be gone is with regard to the question of



negligence raised by the Transport Corporation. The specific case of the claimant as per the claim petition is that he was standing at Gangadheeswaran Kovil street, on 23.02.2000 and the bus belonging to the Transport Corporation was driven in a rash and negligent manner and it hit the claimant from behind and as a result, the claimant fell down and sustained crush injury on the left ankle.

12. The claimant during his chief examination, has stated that he was standing in Gangadheeswaran Koil street and the bus belonging to the Transport Corporation dashed on the claimant and he fell down. As a result of which, the left foot of the claimant dashed on a stone and as a result, he suffered from crush injury on the left ankle. During cross examination, he did not admit the suggestion that was put by the Transport Corporation that the accident did not take place in the manner in which he described the accident.

13. The driver of the bus was examined as RW1 in this case. He has stated that on 23.02.2000, when the bus was proceeding from Aynavaram towards besant nagar, Purasaiwalkam. The bus was



proceeding slowly near Gangadheeswaran koil at Purasaiwalkam and taking advantage of the same, the claimant attempted to get into the bus and on seeing the same in the rear mirror, the driver applied brakes and the claimant lost his balance and fell down. During cross examination, his evidence has not been discredited.

14. The above evidence of RW1 must be considered along with Ex.P1 which is the FIR that was registered immediately after the accident based on the complaint given by one Chandran. The said Chandran was an Auto rickshaw driver and he has stated in the complaint that he had parked his auto rickshaw and was standing near the temple and at that time, he saw one person attempting to get into a moving bus and he lost balance and he fell down and he sustained injuries. This version given in the FIR is in line with the evidence of RW1.

15. The Tribunal while considering the above evidence, concluded that the Transport Corporation ought to have examined some independent witness in this case and whereas, they examined only the driver of the bus. That apart, no attempt was made to further prosecute



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the FIR that was registered against the claimant based on the complaint given by the above said Chandran. Hence, by applying the Principle of preponderance of probabilities, the Tribunal came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the bus belonging to the Transport Corporation.

16. It is true that there was no clinching evidence beyond reasonable doubt to establish that the accident had taken place in the manner in which the driver of the bus had projected it. The driver will always give the version which is advantageous to him. The claimant on the other hand will give a version which is advantageous to him. That is the reason why, the Tribunal was insisting for an independent witness in this case, since the FIR has been registered based on the complaint given by some third party and the driver never gave any such complaint. That apart, there was also no progress after the FIR was registered. In view of the same, the decision that was arrived at by the Tribunal cannot be held to be perverse. Consequently, the finding of the Tribunal by fixing the negligence against the driver of the bus is hereby confirmed.



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17. Insofar as the compensation is concerned, this Court finds that the quantum fixed by the Tribunal under various heads is reasonable.

18. One disturbing factor in this case is that the accident had taken place in the year 2000 and the claim petition came to be filed in the year 2002. However, the award was passed in the claim petition after nearly twenty one years in the year 2023. This is clearly the fault of the Court for having taken 21 years to dispose of a claim petition. The fault of the Court must not prejudice the transport corporation and they cannot be mulcted with payment of interest at the rate of 7.5% for a period of 21 years. This was taken into consideration even at the time of entertaining the appeal filed by the Transport Corporation and this Court directed the Transport Corporation to deposit the compensation amount without interest. Accordingly, the compensation amount has also been deposited by the Transport Corporation.

19. Taking into consideration the peculiar facts of this case and the exorbitant delay that has occurred due to the fault of the Court, this Court is inclined to confine the award to the amount that has already been



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deposited by the Transport Corporation before the Tribunal.

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20. In the result, both the CMAs are disposed of in the above terms and the claimant is permitted to withdraw the amount that has been deposited by the Transport Corporation to the credit of MCOP No.2543 of 2000. No costs. Consequently, the connected miscellaneous petition is closed.

26.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To, Motor Accident Claims Tribunal, Court of IV Judge, Small Causes

Court at Chennai.

N.ANAND VENKATESH.,J

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