

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.05.2008

CORAM:

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

C.M.A.No.858 of 2003

The Managing Director,
Tamil Nadu State Transport Corporation (K-Dn I) Ltd.,
Kumbakonam. ... Appellant/Respondent

Vs.

Subramanian ... Respondent/Claimant

Prayer: Appeal filed against the Judgment and Decree dated 23.01.2002 made in M.A.C.T.O.P.No.160 of 2001 on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Nagapattinam.

For Appellant : Mr.M.Krishnamoorthy
For Respondent : M/s.V.Kathiravan

JUDGMENT

The Civil Miscellaneous Appeal is filed against the award passed in M.A.C.T.O.P.No.160 of 2001 dated 23.01.2002 by the Motor Accidents Claims Tribunal viz., Additional District Judge, Nagapattinam.

2.The respondent/claimant has filed the claim petition projecting a claim of Rs.3,12,000/- in all and praying for an award of Rs.1,50,000/- as restricted compensation.

3.The Claims Tribunal viz., Additional District Judge, Nagapattinam has passed an award of Rs.1,05,800/- directing the appellant to pay the same with interest at 9% per annum from the date of filing of the petition till date of payment etc.

4.Dissatisfied with the award passed by the Tribunal in M.A.C.T.O.P.No.160 of 2001 dated 23.01.2002, the respondent/ Transport Corporation as appellant has preferred this civil miscellaneous appeal on the ground that the award passed is excessive.

5.The brief facts of the claim are as follows:-

On 16.03.1991 at about 8.45 hours when the claimant was travelling as passenger in the bus bearing Registration No.TN.49.N.0759 and the said bus was driven in a rash and negligent manner on the Kandithampettai Main Road near the well bridge, as a result of which it went off the road and fell down on the road side in an upside down position resulting in grievous injuries. The claimant was taken to the Government Hospital Mannargudi immediately after the accident and was admitted as an inpatient. The claimant some days later got discharged and was admitted in a private hospital for best treatment. A criminal case in Cr.No.57 of 2001 under Section 279, 337 and 338 I.P.C. was registered by the Paravakkottai police against the driver of the bus. Since the driver of the bus was responsible for causing the accident, the respondent/appellant as owner of the bus is vicariously liable to pay the compensation claimed.

The stand taken by the appellant before the Tribunal is that the bus was not driven in high speed and negligently by the driver and that the claimant has to prove the manner of accident as stated in the petition. It is significant to point out in the counter, the Transport Corporation has inter alia stated that from the shop the cyclist came crossing suddenly and to prevent dashing against him, the driver of the bus applied break and while turning the bus on right side, the bus front wheel was got in the cable pit and later it slid.

Before the Claims Tribunal, a common trial was held in M.A.C.T.O.P.No.159, 160 and 161 of 2001 and totally P.Ws.1 to P.W.5 were examined and Exs.P.1 to P.9 were marked on the side of claimant. On the side of respondent no one was examined and no documents were marked.

After contest, on appreciation of oral and documentary evidence, the Tribunal has passed an award of Rs.1.05,800/- with interest at 9% per annum from the date of petition till date of payment.

6.In order to prove negligence, the claimant has examined himself as P.W.2 in the case. In his evidence he has deposed that on 16.03.2001 he was travelling along with others in the Transport Corporation bus belonging to the Tamil Nadu Government and in the evening at 6.15 p.m. in Kandithampettai bridge the driver of the bus drove the bus negligently as a result of which the bus capsized and that he sustained injuries on his left hand wrist, head, nose and after the accident he was admitted in the Mannargudi Government Hospital and later he received treatment at the private hospital.

7.Ex.P.1 is the certified copy of FIR. In Ex.P.1-FIR, the informant's name is mentioned as Arivanandham. Charged persons name is mentioned as driver of bus TN.49.N.0759, belonging to the Tamil Nadu Transport Corporation. In Ex.P.1-FIR the informant Arivanandham has

categorically stated that he travelled in the bus TN.49.N.0759 involved in the accident on 16.03.2001 at evening 6.15 p.m. and that the bus while proceeding near Kandithampettai well bridge, the driver drove the bus in high speed and negligently and applied sudden break, as a result of which the bus lost control and ran haphazardly and got capsized on the right side of the road, as a result of which the passengers in the bus got entangled and raised their voices and that he sustained blood injury on the upper side of the right eyebrow and that along with him over 45 persons sustained injuries and they received treatment at Mannargudi Hospital and he was examined in the Hospital. A perusal of Ex.P.1-FIR reveals that in Cr.No.57 of 2001 the Paravakkottai Police has registered a case under Section 279, 337 and 338 I.P.C. No doubt, the informant of the accident Arivanandham has not been examined before the Tribunal. However, the claimant in M.A.C.T.O.P.No.160 of 2001 has been examined as P.W.2 in the common trial held before the Tribunal. His evidence is unambiguous and quite clear as to the manner and happening of accident. His evidence is cogent, reliable and worthy of acceptance in regard to the happening of occurrence of the accident.

8.It is pertinent to point out that to discredit the version of P.W.2 in regard to the occurrence, no one has been examined on behalf of the appellant/Transport Corporation. Therefore, the evidence of P.W.2 remains unchallenged. In short, the evidence of P.W.2 is unimpeachable. Hence, accepting the oral testimony of P.W.2 coupled with Ex.P.1-FIR, this Court comes to the conclusion that the accident has occurred due to the negligent driving of the bus by its driver and consequently, this Court is in complete agreement with the finding arrived at by the Tribunal that the accident has happened on account of the rash and negligent act of the driver of the bus and that the said driver is solely responsible for causing the accident and the point is answered accordingly.

9.In regard to the issue of quantum of compensation, it is to be pointed out that the Tribunal has awarded a sum of Rs.1,00,800/- for 35% permanent disability sustained by the claimant. For pain and suffering it has granted a sum of Rs.5,000/-. In all, the Tribunal has awarded a sum of Rs.1,05,800/- as compensation to the claimant along with interest at 9% per annum from the date of filing of the petition till date of payment. The Tribunal has fixed the notional income of Rs.1,500/- per month and has applied the multiplier of 16.

10.According to the learned counsel for the appellant for the disability of 35%, the award of Rs.1,05,800/- fixed by the Tribunal is exorbitant and further that the Tribunal has not taken into consideration of the fact that P.W.5, the doctor has assessed the disability at the excessive rate of 35% and therefore, prays for allowing the appeal.

11.Ex.P.4 is the wound certificate of P.W.2-Subramanian. In Ex.P.4-wound certificate, it is mentioned that the date of admission of the claimant is 16.03.2001 and the date of discharge is mentioned as 19.03.2001. A perusal of Ex.P.4-wound certificate shows that P.W.2 (Subramanian), the claimant has sustained a fracture of nasal bone and the injury is mentioned as grievous.

12.P.W.5, the doctor who examined P.W.2 (the claimant in M.A.C.T.O.P.No.160 of 2001) in his evidence has stated that he has not given the treatment and that x-ray on nose was taken to the claimant besides conducting other examinations and that the nose stem on left side of the claimant was seen bent and that there was swelling on left side nose and in air chambers water was clogged and hence, there is a possibility for the claimant to suffer frequently from nose blocked, headache and blood oozing out from nose and that he has assessed the disability at 35% and has issued the disability certificate-Ex.P.9. In Ex.P.9-Disability Certificate dated 20.12.2001 issued by P.W.5- doctor, the disability of P.W.2-Subramanian is assessed at about 30%. Though P.W.5, the doctor in his oral testimony has stated that he has assessed the disability of the claimant-P.W.2 (Subramanian) at 35%, a perusal of Ex.P.9-disability certificate dated 20.12.2001 issued by him indicates clearly that the disability of the claimant is about 30%. Therefore, by safely relying on the disability certificate-Ex.P.9, this Court fixes the disability of the claimant at about 30%, since the documentary evidence overrides the oral testimony of P.W.5-Doctor, in the considered opinion of this Court.

13.In the Orissa Cooperative Insurance Society Limited V. Manabendra Moharatha and others, 1976 A.C.J. 453, for a fracture of nasal bone, a permanent disfigurement to the injured a meritorious student of M.A. Class and was also looking after his electrical business and cultivation, the Tribunal's award of Rs.13,600/- for treatment, for loss of business and agricultural income and for loss of study and career, in appeal the award has been reduced to Rs.9,200/-.

14.In Laxmibai V. M.P. State Road Transport Corporation and another, 1978 A.C.J. 229, for a fracture of nasal bone and wound on the forehead to a injured house hold lady aged about 30 years, for a permanent disfiguration caused by ugly appearance, the Tribunal's award of Rs.3,000/- for mental suffering and pain and Rs.750/- for medical expenses, in appeal has been enhanced to Rs.5,000/- for pain and suffering.

15.In Daba Prashad Ghosh V. Banwari Lal and others, 2006 A.C.J. 516, for the disfiguration of face due to seven injuries including two on forehead, one on tip of nose and one on bridge of nose, an injured, the Assistant Administrative Officer in insurance company suffered permanent disfigurement of face requiring plastic surgery and had to

undergo operations for treatment of scars the Tribunal's award of Rs.20,000/- has been enhanced to Rs.35,000/- by the learned Single Judge in appeal and in L.P.A., the award has been further increased to Rs.75,000/-.

16.Considering the fact that the claimant has suffered a disability of about 30% and bearing in mind the difficulties experienced/likely to be experienced by the claimant has mentioned in Ex.P.9-Disability Certificate and taking note of the fact that the age of the claimant at the time of accident is 42 years, this Court grants a sum of Rs.45,000/- (calculating at the rate of Rs.1,500/- for 1% disability) towards disability sustained by the claimant. For pain and suffering on the facts and circumstances of the case, this Court grants a sum of Rs.10,000/- to the claimant.

17.It is pertinent to point out that the Claims Tribunal are not to apply the strict rules of Evidence Act, since the proceedings before it are of summary nature. In the instant case, though the claimant has claimed a sum of Rs.10,000/- towards medical expenses, even though there is no proof in this regard, considering the fact that the claimant has suffered a disability of 30% and that he has taken treatment privately after his discharge from Government Mannargudi Hospital, this Court equity justice and fair play awards a sum of Rs.5,000/- in this regard. Even though the claimant has claimed a sum of Rs.25,000/- towards extra nourishment expenses and notwithstanding the fact that there is no acceptable satisfactory evidence on the side of claimant, yet in this regard considering the nature of grievous injury and disability sustained by the claimant, this Court allows a reasonable sum of Rs.1,500/-. In the absence of proof for transport expenses, this Court grants a sum of Rs.1,000/-, though a claim of Rs.2,000/- is made in this regard. Thus, the respondent/claimant in all is awarded a total compensation of Rs.62,500/- (Rs.45,000 + 10,000 + 5,000 + 1,500 + 1,000). Accordingly, this Court awards a sum of Rs.62,500/- (Rupees sixty two thousand and five hundred only) along with interest at 9% per annum from the date of filing of the petition till date of payment, as compensation payable by the appellant/Transport Corporation for the grievous injury and resultant disability sustained by the claimant and resultantly, this Court is of the considered opinion that a sum of Rs.1,05,800/- granted by the Tribunal as compensation to the respondent/claimant is excessive/exorbitant.

18.Admittedly, the Tribunal has not fixed the lawyer's fee. However, this Court fixes the lawyer's fee at Rs.2,656/- payable by the appellant Transport Corporation.

19.In fine, on an overall picture of the facts and circumstances of the case and on consideration of available materials on record and looking it from any point of view, this Court is of the considered view that an award of Rs.1,05,800/- passed by the Motor Accidents Claims

Tribunal viz., Additional District Judge, Nagapattinam in M.A.C.T.O.P.No.160 of 2001 dated 23.01.2002 is excessive and exorbitant and instead this Court awards a total compensation of Rs.62,500/- (Rupees Sixty two thousand and five hundred only) along with interest at 9% per annum from the date of filing of the petition till date of payment, is fair, just and reasonable, payable by the appellant Corporation.

20.Earlier on 25.04.2003 in C.M.P.No.6152 of 2003 this Court has passed an order of interim stay on condition that the appellant Transport Corporation depositing the entire balance compensation amount including interest and costs to the credit of M.A.C.T.O.P.No.160 of 2001 on the file of Additional District Judge (Motor Accidents Claims Tribunal), Nagapattinam within a period of eight weeks from today, failing which the stay shall stand vacated automatically. Further, on 13.08.2003, this Court has permitted the respondent/claimant to withdraw 50% of the amount deposited without furnishing security and has given direction to invest the remaining amount in Indian Bank, Nagapattinam in fixed deposit, initially for a period of three years and thereafter to be renewed during the pendency of appeal and made the interim stay as absolute.

21.It is open to the respondent/claimant to receive the balance sum lying to the credit of M.A.C.T.O.P.No.160 of 2001 by filing an application for payment out as per Civil Rules of Practice in the manner known to law. Equally, liberty is given to the appellant Transport Corporation to receive the balance amount lying to the credit of M.A.C.T.O.P.No.160 of 2001 on the file of Motor Accidents Claims Tribunal viz., Additional District Judge, Nagapattinam, by filing necessary application in accordance with law.

In fine, the Civil Miscellaneous Appeal is allowed in above terms and consequently, the award dated 23.01.2002 passed by the Motor Accidents Claims Tribunal viz., Additional District Judge, Nagapattinam in M.A.C.T.O.P.No.160 of 2001 is modified. Bearing in mind the facts and circumstances of the case, the parties are directed to bear their respective costs in this appeal.

Sd/
Asst.Registrar

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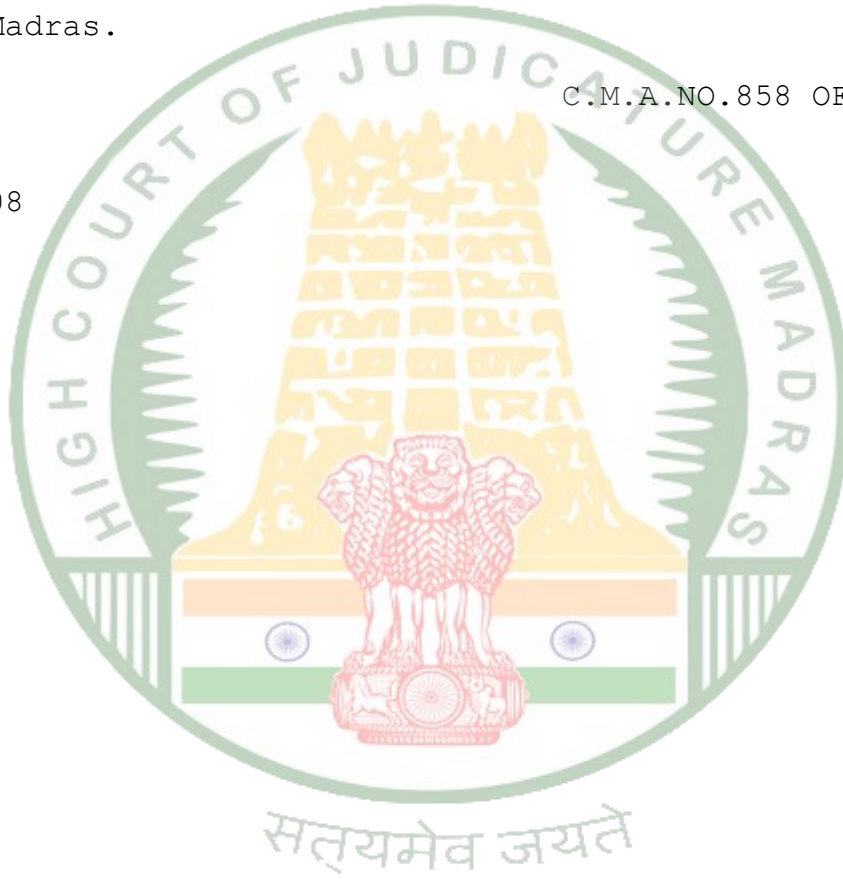
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