IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.12.2009

CORAM

THE HONOURABLE MR. JUSTICE V. PERIYAKARUPPIAH

C.M.A.Nos.2911 and 2912 of 2004

The Managing Director
TamilNadu State Transport
Corporation Ltd.,
Villupuram Division I
Villupuram-605 602. ..Appellant in both the appeals

vs.

1.Edwin Lionel ..Respondent in C.M.A.No.2911/2004
2.Angel @ Angeline Gnanamani ..Respondent in C.M.A.No.2912/2004

Prayer in C.M.A.2911/2004:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award dated 27.02.2004 made in M.C.O.P.No.168 of 2002 on the file of Motor Accidents Claim Tribunal (Sub Court), Mathuranthagam, Chengalpattu District.

Prayer in C.M.A.2912/2004:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award dated 27.02.2004 made in M.C.O.P.No.169 of 2002 on the file of Motor Accidents Claim Tribunal (Sub Court), Mathuranthagam, Chengalpattu District.

For Appellant : Mr.S.Sankaran for
M/s. Rajnish Pathiyil
For Respondents : Mr.Nagu Shah

COMMON JUDGMENT

These two appeals are directed against the common judgment and award passed by the lower court made in M.C.O.P.Nos.168 and 169/2002 respectively dated 27.02.2004. The appellants in both the appeals are the respondent before the lower court. The claimants before the lower court are the respondents in these appeals.

2. C.M.A.No.2911/2004: The case of the claimant before the lower court in brief would be as follows:

(a) On 26.06.1998, at about 04.45 p.m while the injured Edwin Lionel was returning with his daughter Anjaline Gnanamani in his motor cycle bearing No. TN-02-2994 by following all the rules of traffic strictly on the extreme left side of the G.S.T. Road from north to south at the place of occurrence, the respondent's bus driver driving the bus TN.32-N-1113 in a rash and negligent manner without following rules of traffic dashed against the motor cycle and the petitioner from the behind. Consequently, the injured and his daughter were thrown out from the motor cycle and fell down and there by caused grievous injuries and other injuries to the petitioner and his daughter. The accident took place solely due to the rash and negligent driving of the bus by the driver.

(b) The injured petitioner and his daughter were immediately taken to Mathuranthagam Government hospital and thereafter, they were taken to Tamil Nadu Hospital, Cheran Nagar, Chennai 601 302, for further treatment.

(c) The petitioner is an advocate practicing in Civil and Criminal cases in Mathuranthagam and Chengalpattu courts. He is practicing for the past 20 years. The petitioner is the sole bread winner of his family. The petitioner is not able to attend the court for nearly six months due to the accident. The petitioner is also put to great pain and mental agony. The petitioner is permanently disabled to do his usual work due to fractures caused to him in the accident. The petitioner claims a sum of Rs.2,00,000/- for the damages to which the respondent is liable to pay the same.

3. The contentions raised by the respondent in his counter filed before the lower court would be as follows:

(a) The respondent submits that age, occupation, monthly income, the nature of the alleged injuries sustained by the petitioner, the period of treatment, medical expenditures, and the disability are not admitted by the respondent and the petitioner is put to strict proof of the same.

(b) The respondent submits that the petitioner has not sustained any disability at all and therefore the particulars of claim mentioned by the petitioner is made without any basis. The respondent further submits that the petitioner had no valid driving license to drive the motor cycle. The petitioner is put to strict proof of it. The manner of the accident alleged by the petitioner is not correct.

(c) On 26.06.1998, the respondent's bus bearing Registration No. TN-32-N-1113, on the route No.122, was on its trip from Chennai

to Tiruvannamalai. The driver started its trip from Chennai at about 14.50 hours. At about 17.40 hrs when the bus was proceeding near Mathuranthagam veterinary hospital, the respondent's bus driver noticed a lorry was parked on the left side of the road, and next to it a cyclist was proceeding in the same direction. At that time, the petitioner motor cyclist was also proceeding towards south in a motor cycle with pillion rider next to the cyclist. On seeing this, the respondent's bus driver slowed down the bus, sounded horn and over took the motor cycle. While so, the petitioner who was driving the motor cycle negligently, lost his balance, collided with the cyclist, and fell down.

(d) The respondent's driver was in no way responsible for the accident. The accident took place only due to the rash and negligent driving of the petitioner. Therefore, the petitioner cannot claim any compensation for his negligent act. The respondent is an unnecessary party to the proceedings. Hence the petition has to be dismissed 'in limini'. In any event the compensation claimed is highly excessive. The respondent prays that this petition may be dismissed with costs.

4. C.M.A.No.2912/2004: The case of the claimant before the lower court in brief would be as follows:

(a) On 26.06.1998, at about 04.45 p.m while the injured petitioner Angel was traveling with her father Edwin Lionel, in his motor cycle bearing No. TN-02-2994 which was driven by her father on the extreme left side of the G.S.T. Road from North to South at the place of occurrence the respondent's bus driver driven the bus TN-32-N-1113 in a rash and negligent manner without following rules of traffic dashed against the motor cycle and the petitioner from the behind. Consequently the injured petitioner and his father were thrown out from the motor cycle and fell down and there by caused grievous injuries and other injuries to them.

(b) The injured petitioner and her father were immediately taken to Mathuranthagam Government hospital and there after they were taken to Tamil Nadu Hospital, Cheran Nagar, Chennai 601 302, for further treatment.

(c) The petitioner submit that minor Angel is a 8th standard student at the time of accident. The minor petitioner was put into shock, pain and mental agony due to the accident. The minor petitioner is not able to move her right hand freely, and move freely and she is not able to breath freely. She is permanently disabled to attend her routine due to the fractures sustained in the accident. The petitioner estimates the damages at Rs.3,00,000/- to which the respondent is liable to pay the same.

5. The contentions raised by the respondent in his counter filed before the lower court would be as follows:

(a) The respondent submits that age, the nature of the alleged injuries sustained by the petitioner, the period of treatment, medical expenditures, and the disability are not admitted by the respondent and the petitioner is put to strict proof of the same.

(b) The respondent submits that the petitioner has not sustained any disability at all not the particulars of claim mentioned by the petitioner are true.

(c) On 26.06.1998, the respondent's bus bearing Registration No.TN-32-N-1113, on the route No.122, was on its trip from Chennai to Tiruvannamalai. The driver started its trip from Chennai at about 14.50 hours. At about 17.40 hrs, when the bus was proceeding near Mathuranthagam veterinary hospital, the respondent's bus driver noticed a lorry was parked on the left side of the road, and next to it a cyclist was proceeding in the same direction. At that time, the petitioner and her father motor cyclist were also proceeding towards south in a motor cycle where the petitioner was a pillion rider next to the cyclist. On seeing this, the respondent's bus driver slowed down the bus, gave horn and over took the motor cycle. Whileso, the petitioner's father who was driving the motor cycle negligently, lost his balance, collided with the cyclist, and fell down.

(d) The respondent's driver was in no way responsible for the alleged accident. This accident took place only due to the rash and negligent driving of the vehicle by petitioner's father. Therefore, the petitioner cannot claim any compensation for the negligent act. The respondent is an unnecessary party to the proceedings. Hence the petition has to be dismissed 'in limini'. In any even the compensation claimed is exorbitant and highly excessive.

The respondent prays that this petition may be dismissed with costs.

6. The lower court had clubbed both M.C.O.P.Nos.168 and 169 of 2002 and had recorded common evidence.

7. Accordingly, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.20 were admitted on the side of the claimants. R.W.1 was examined and no documents were produced on the side of the respondent. Lower court had appraised the evidence adduced on either side and had awarded a sum of Rs.1,85,000/- with 9% interest from the date of petition till the date of realisation in favour of the claimant in M.C.O.P.No.168/2002, with proportionate costs.

8. The claimant in M.C.O.P.No.169/2002 was awarded a sum of Rs.2,50,000/- with interest at 9% p.a from the date of petition till the date of realisation with proportionate costs.

9. Challenging the aforesaid decisions, the respondent/ Transport Corporation before the lower court has preferred both appeals.

10. Heard Mr.S.Sankaran, learned counsel for the appellant/respondent and Mr.Nagu Shah, learned counsel for the respondents/claimants.

11. For convenience, the ranks of parties before the lower court are maintained hereinafter.

12. The learned counsel for the appellant (respondent/Transport Corporation) would submit in his argument that the Tribunal had miserably failed to consider the pleadings raised by the respondent to appreciate the evidence of R.W.1 the driver of the respondent and had come to the conclusion fixing the responsibilities entirely on the respondent. He would further submit that the claimant in M.C.O.P.No.168/2002 who was riding the two wheeler and he was responsible for the cause of accident and therefore the liability should be fixed against him also.

13. He would categorically submit that the fixation of income of the claimant in M.C.O.P.No.168/2002 at Rs.10,000/- per month, without any production of any income tax return is not at all sustainable and the awarding of compensation for permanent disability at Rs.40,000/- on the basis of the permanent disability of the claimant in M.C.O.P.No.168/2002 at 40% is also not sustainable. He would further submit that the compensation for loss of future income at Rs.50,000/- for the claimant in M.C.O.P.No.168/2002 was not supported by any document. He would again submit in his argument that the lower court was wrong in awarding the compensation of Rs.50,000/- towards medical expenditure in M.C.O.P.No.168/2002, as it has rejected his claim for Rs.1,11,684/-. He would further submit that a total compensation of Rs.1,85,000/- awarded to the claimant in M.C.O.P.No.168/2002 is highly excessive and therefore it has to reduced.

14. He would further submit in his argument that the quantum of compensation as awarded at Rs.60,000/- towards permanent disability said to have been caused for the claimant in M.C.O.P.No.169/2002 was too high and the evidence of P.W.3 Doctor should not have been accepted, since he did not treat the claimant in M.C.O.P.No.169/2002. He would further submit that the percentage of disability awarded to the claimant in M.C.O.P.No.169/2002 is also excessive. He would further submit that the compensation awarded at Rs.50,000/- to her for pain and sufferings was without any documentary proof and therefore it is not sustainable.

15. He would also submit that the compensation of Rs.50,000/- awarded towards future income was also not based upon any evidence

and the claimant in M.C.O.P.No.169/2002 was admittedly a minor student at the time of accident. He would also submit that the medical expenditure awarded at Rs.75,000/- is highly excessive and without any proof it has been ordered so. He would cumulatively submit in his argument that the award of total compensation of Rs.2,50,000/- in favour of the claimant in M.C.O.P.No.169/2002 with subsequent interest is highly excessive and the evidence may properly be appraised and the compensation awarded to the claimant may be reduced in accordance with law.

16. The learned counsel for the respondent (claimant) would submit in his argument that the lower court was perfectly right in arriving to the conclusion of awarding compensation at Rs.1,85,000/- for the claimant in M.C.O.P.No.168/2002 and Rs.2,50,000/- for the claimant in M.C.O.P.No.169/2002.

17. He would further submit in his argument that the judgment of the criminal court would not in anyway bind the Tribunal for reaching a decision on the evidence available before it and therefore the interested evidence of the driver would not in anyway disprove the negligence in causing accident. The evidence of the claimants would categorically go to show that the driver of the respondent alone was responsible for the cause of the accident.

18. He would further submit that claimant in M.C.O.P.No.168/2002 was a practicing lawyer who was carrying his daughter from school to home after he attended the court and he was obeying traffic rules and was riding on the two wheeler to the extreme left of the road where as the respondent's driver drove the vehicle in a rash and negligent manner and hit the two wheeler from its behind and the happening itself would prove the negligence of the driver of the respondent and therefore the respondent was rightly fixed with the liability to pay the compensation to the claimants.

19. He would further submit in his argument that the lower court had awarded the compensation for permanent disability in a stringy manner and if the compensation has awarded as per the medical opinion given by P.W.3, the entire compensation would have been awarded to the claimants. However, the lower court had reduced the percentage of disability, despite the evidence of P.W.3 and had awarded less compensation. He would further submit that the expenditure for treatment has been drastically reduced by the lower court even though the claimants have produced evidence in support of their claims. He would further submit that the claimants had spent considerable time for the treatment during the said period and therefore there would be loss of income for the claimants. It has also been calculated by the lower court promptly and any variance in assessment of the same could have been adjusted with the compensation payable on the other heads namely permanent disability. He would further submit that the compensation fixed by the lower court may be

confirmed even though the claimants are entitled to a higher compensation than that of the compensation awarded by the lower court. He would therefore request the court to reorganize the compensation if needed and to confirm the judgment and award passed by the lower court.

20. I have given anxious thoughts to the arguments advance on either side.

21. The accident had happened on 26.06.1998, when the claimants in both the applications were riding on a two wheeler in the G.S.T. Road, Mathuranthagam, from north to south. The respondent's bus driven by its driver and he dashed the two wheeler of the claimant from its backside and thus the accident was caused. The nature of the happening of the accident as seen from the documents produced on either side, we could see that the said happening would itself speaks volume about the negligence of the driver of the bus. Therefore, this court has no hesitation to come to a conclusion that the accident had happened only due to the rash and negligent driving of the respondent/transport corporation bus. Therefore the liability fixed upon the respondent(appellant) is unassailable.

22. As regards the quantum of compensation payable to the claimant in M.C.O.P.No.168/2002, we could perceive from the document that the claimant was an advocate at the time of accident and he was also aged about 46 years. The accident happened on 26.06.1998 and at that time he was actively practising law at that time and he would have certainly earned a sum of Rs.10,000/- per month. Therefore, the finding of the lower court that the claimant in M.C.O.P.No.168/2002 would have earned a sum of Rs.10,000/- per month could be correct. Both the claimants have sustained injuries in the accident and were admitted in the Government hospital Mathuranthagam, thereafter only they were admitted in Tamilnadu hospital at Tambaram. The claimant in M.C.O.P.No.168/2002 was admitted in the said hospital from 26.06.1998 to 03.07.1998 as an inpatient and thereafter he was admitted again on 16.07.1998 as an inpatient for three more days and took treatment. Thereafter, he used to visit the physiotherapist for doing exercise and also for getting training for proper breathing. It had also been spoken in evidence that he had gone to Royapettah hospital for more than 10 times for treatment purpose and he was not able to lift his hand as before and he would also not able to ride the motor cycle nor able to attend court.

23. As regards the wound certificate produced by him in Ex.P.2 is concerned, we could see that he has got three abrasions on right shoulder, arm and back and two fractures on the right scapula and on the right humerus. In the second fracture there was a dislocation on right shoulder joint and therefore, the said injury could be considered as two grievous injuries and the fracture on right scapula

would constitute another therefore the compensation for pain and sufferings to the claimant in M.C.O.P.No.168/2002 should have been awarded for three grievous injuries and three simple injuries. When it is applied with the guidelines given under II schedule of Motor Vehicle Act the compensation awardable would be Rs.18,000/- i.e Rs.5,000/- per one grievous injury and Rs.1,000/- per one simple injury. The awarding of compensation at Rs.25,000/- on the category of pain and sufferings is not correct.

24. As regards the permanent disability caused to the claimant in M.C.O.P.No.168/2002 is concerned, the relevant disability certificate produced by P.W.3 would show that there was a disability of 45% sustained by him. The lower court had reduced 5% as a normal reduction for any permanent disability certificate awarded by the Doctor. The said reason furnished by the lower court is not sustainable. The disability caused on the right shoulder due to the fracture and the dislocation of the right shoulder. It is quite natural that a disability of 45% could be awarded by the Doctor. The said disability would seriously affect the profession of a lawyer who used his right hand. However, it has not been spoken by the claimant that he was completely prevented from going to the court due to the said disability.

25. Therefore, it cannot be considered as a pecuniary loss but it can be calculated on non pecuniary loss for arriving to a justifiable compensation. Accordingly if a sum of Rs.1,000/- is considered for 1% of disability it comes to Rs.45,000/- awardable towards permanent disability. However, the disability caused to the claimant would result in his total personal activities. For such loss of amenities and inconvenience, a sum of Rs.20,000/- could be awarded in favour of the claimant. The claimant had produced Ex.P.8, Ex.P.9 and Ex.P.10 series being the bills for the expenditure and Ex.P.11 was produced for the physiotherapy treatment. According to the bills submitted by the claimant he had spent Rs.1,11,684/- for the treatment undergone by the him. However, the lower court had reduced it to Rs.50,000/- for no reason. The said whole amount of medical expenditure is certainly payable to the claimant. Apart from that the claimant is entitled for an expenditure incurred towards attendants and also for extra nourishment. Considering the period of treatment, the claimant is found entitled to a sum of Rs.5000/- towards attendants charges and Rs.10,000/- towards extra nourishment. If these amounts added under various heads and are computed, it would arrive to Rs.2,09,684/-. However, the claimant had asked for a sum of Rs.2,00,000/- only. The lower court had awarded a sum of Rs.1,85,000/-, in favour of the claimant, against which he did not prefer any appeal nor any cross appeal in this appeal for enhancement of compensation. Therefore, this court is of the view that the awarding of compensation by the lower court to the claimant in M.C.O.P.No.168/2002 is far less and the claimant is entitled to the compensation sought for by him in the petition. Since the claimant

had not preferred any appeal, this court cannot enhance the same but, to necessarily confirm the judgment and award passed by the lower court in M.C.O.P.No.168/2002.

26. So far as the compensation fixed by the lower court in M.C.O.P.No.169/2002 is concerned the claimant is a minor at the time of claim in M.C.O.P.No.169/2002 and also at the time of accident. She was a student of 8th standard and she also sustained serious injuries in the said accident. Her wound certificate is produced as Ex.P.20. The said wound certificate would show that she sustained abrasions over the right side of her chest and fractures of her ribs 2 to 5 on the right side, the fracture of right scapula and the right immuno thorax. The opinion given is grievous therefore we could see six fractures and one abrasion. It is also been opined that the lungs of the claimant in M.C.O.P.No.169/2002 was also pierced due to the fracture of the rib bones. Therefore, the said fracture will also be considered as one of the grievous injuries. According to the guidelines laid down in II schedule of the Act a sum of Rs.5,000/- for grievous injury and Rs.1,000/- for simple injury has to be awarded. Thus a sum of Rs.36,000/- is awardable to the claimant towards pain and sufferings. The award of compensation at Rs.50,000/- towards pain and suffering by the lower court is not correct.

27. The claimant was admitted in Government hospital Mathuranthagam and thereafter transferred to Tamilnadu hospital at Tambaram and she was admitted as inpatient from 26.06.1998 to 19.07.1998 and thereafter once again she was admitted in the same hospital and underwent a surgery on her right shoulder. Thereafter also she went to the said Tamilnadu hospital on 10 occasions for undergoing physiotherapy treatment and thereafter she took treatment in Esther Jebarani hospital from 28.07.1998 to 30.08.1998 as an in patient and she incurred expenditure for the said treatment taken by her. She had also spoken to the effect that she could not breath as before and she cannot lift any objects. She has produced Ex.P.15 , Ex.P.17 and Ex.P.18 towards the medical expenditure sustained by her in Tamilnadu hospital and Esther Jebarani hospital Mathuranthagam. Those documents would show that she incurred a sum of Rs.1,89,294/- towards medical treatment. However, the lower court had awarded a sum of Rs.75,000/- without any basis. The claimant is entitled to the total sum of medical expenditure as produced through the documents. Apart from that the claimant also produced Ex.P.16 bunch of the receipts given by the contract carriages for going over to Madras on 16 occasions. The said amount of Rs.16,000/- incurred for transport to hospital was also not considered by the lower court. The claimant is entitled for those amounts also.

28. As regards the permanent disability is concerned, P.W.3 Doctor had given the certificate Ex.P.19 and thereby awarded 65% of disability for her. The lower court had reduced 5% for no reason and had awarded a sum or Rs.60,000/- towards compensation for permanent

disability. The claimant before the lower court was a minor at the time of accident and therefore the compensation for the disability should have been considered by the lower court at Rs.2000/- per one percent and if it had been calculated it should have been Rs.1,35,000/- for 65% of the permanent disability. Therefore, the decision of the lower court that the claimant is entitled to only Rs.60,000/- towards permanent disability is not correct. However, the lower court had awarded a sum of Rs.50,000/- towards loss of future income. The said amount should have been awarded for loss of amenities and personal inconvenience caused to her. Therefore, the total amount of compensation payable to the claimant should have been at Rs.4,21,294/- However the claimant asked for compensation of Rs.3,00,000/- to which the lower court had awarded a sum of Rs.2,50,000/-. The claimant has not preferred any appeal against the judgment and award passed by the lower court nor any cross appeal fixed in the appeal. Therefore, this court has no other option except to confirm the judgment of lower court awarding a sum of Rs.2,50,000/- only, in favour of the claimant. Therefore, the case of the appellant in both the appeals that the compensation awarded by the lower court should have been reduced cannot be accepted.

29. For the reasons held above the judgment and award passed by the lower court are confirmed and the appeals preferred by the appellant are liable to be dismissed. The parties are directed to bear their respective costs.

30. It was represented by the learned counsel for the respondent that they were permitted to withdraw 50% of the award amount with accrued interest deposited before the lower court and accordingly they had withdrawn. The remaining 50% of the amount were ordered to be deposited in reinvestment scheme and they may be permitted to withdraw the said amount with accrued interest.

31. Since the appeals preferred by the appellant are dismissed, there is no impediment for the claimants to withdraw the balance 50% of the amount with accrued benefits.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kpr

To

1. The Motor Accidents Claim Tribunal
   (Sub Court),
   Mathuranthagam,
   Chengalpattu District.

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

+ 2 c.cs. to Mr. N. Nagusah, Advocate. S.R.No.71893 & 71894.

C.M.A.Nos.2911 and 2912 of 2004

KA (CO)
GSK 09.03.2010.