

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2010

CORAM

THE HONOURABLE MR. JUSTICE. C.S.KARNAN

C.M.A.No.2062 of 2006

and

M.P.No.1 of 2006

The Managing Director
Tamilnadu State Transport
Corporation Ltd.,
Coimbatore Division - 2
Chennimalai Road,
Erode District .. Appellant

Vs

1.K.Subramaniam
2.G.Yuvaraj .. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 31.08.2005, made in M.C.O.P.No.410 of 2004, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Gobichettipalayam.

For appellant : Mr.A.Babu

For respondents : Mr.MA.P.Thangavel for R1
Given-up - R2

J U D G M E N T

The above Civil Miscellaneous Appeal has been filed by the appellant/second respondent against the Award and Decree, dated 31.08.2005, made in M.C.O.P.No.410 of 2004, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Gobichettipalayam, awarding a compensation of Rs.68,800/- together with 9% interest per annum, from the date of filing the claim petition till the date of payment of compensation.

2.Aggrrieved by the said Award and Decree, the appellant/second respondent has filed the above appeal praying to scale down the award and decree passed by the Tribunal.

3.The short facts of the case are as follows:

On 20.09.2004, at about 2.30 p.m. the claimant was proceeding from his house towards Anthiyur, on his TVS50 motorcycle bearing registration No.TN36 B3662, on the Kolathukadai - Koosalur road. While he was passing Kulathukadai, from east to west, on the left

side of the road, he had slowly turned the vehicle in the curve of the road, turning in the direction of the south and at that point of time, the second respondent's Corporation bus bearing registration No.TN33 N0816 came in the opposite direction without sounding horn and at high speed in a rash and negligent manner and dashed against the motorcyclist. In the result, he had sustained injuries. Immediately, he was taken to the Government Hospital, Gobichettipalayam for preliminary treatment. Thereafter, he was referred to K.K.S.Private Hospital, Gobichettipalayam for further treatment. The said accident case was registered against the first respondent in Crime No.683/2004, under Sections 279 and 337 I.P.C. The accident had occurred only due to the rash and negligent driving of the first respondent. As such, he claimed a compensation of Rs.2,31,000/- with interest before the Tribunal.

4.The second respondent, in their Counter, had resisted the claim petition that the said accident had happened due to the negligence of the claimant. The claimant's age, income and occupation are denied. The compensation amount as claimed by the claimant is on the excessive. As such, the claim petition is not maintainable. The second respondent prayed accordingly.

5.The learned Motor Accident Claims Tribunal framed two issues for the consideration namely:

- (i) At whose negligence the accident had happened?
- (ii) Whether the petitioner is entitled to get compensation? If so, what is the quantum of compensation?

6.On the petitioner's side, the claimant was examined as PW1 and Dr.Periasami was examined as PW2 and fifteen documents were marked as Exs.P1 to P15 namely Ex.P1-Xerox copy of the First Information Report, Ex.P2-Xerox copy of the Wound Certificate, Ex.P3-Xerox copy of the Motor Vehicle Inspector's Report, Ex.P4-Xerox copy of the Charge Sheet, Ex.P5-Xerox copy of the Observation Mahazar, Ex.P6-Xerox copy of the Rough Sketch, Ex.P7-Discharge Summary, Ex.P8-Medicine particulars, Ex.P9-Medicine Receipts, Ex.P10-Medical Bills, Ex.P11-E.C.G.Receipt, Ex.P12-X-ray receipt, Ex.P13-Medical Leave Certificate, Ex.P14-Disability Certificate and Ex.P15-X-ray. On the respondents' side one Ponnusamy, the conductor of the bus, was examined as RW1 and no documents were marked.

7.The claimant, PW1 had adduced evidence stating that on 20.09.2004, at about 2.30 p.m. he was proceeding from his house to Anthiyur on his TVS50 motorcycle bearing registration No.TN36 B3662 on the Kolathukadai - Koosalur road. While he was passing Kulathukadai, from east to west, on the left side of the road, he had slowly turned the vehicle in the curve of the road, turning in the direction of the south and at that point of time, the second respondent's Corporation bus bearing registration No.TN33 N0816 came in the opposite direction without sounding horn and at high speed in

a rash and negligent manner and dashed against the motorcyclist. In the result, he had sustained injuries. Immediately, he was taken to the Government Hospital, Gobichettipalayam for preliminary treatment. Thereafter, he was referred to K.K.S.Private Hospital, Gobichettipalayam for further treatment. The said accident case was registered against the first respondent in Crime No.683/2004, under Sections 279 and 337 I.P.C. Supporting his evidence, he had marked Ex.P1-First Information Report, Ex.P3-Motor Vehicle Inspector's Report and Ex.P5-Observation Mahazar. Further, he had adduced evidence that he had sustained injuries on his right hand finger, right shoulder, right leg joint, left leg toe and right joint. Further, he had adduced evidence stating that surgical operation was also conducted on his injured portions. In order to prove the nature of injuries and mode of treatment and period of treatment he had marked Ex.P7-Discharge Summary, Ex.P8-Medicine particulars, Ex.P9-Medicine Receipts, Ex.P10-Medical Bills, Ex.P11-E.C.G.Receipt, Ex.P12-X-ray receipt, Ex.P13-Medical Leave Certificate.

8.PW2, Dr.Periasamy had adduced evidence stating that he had examined the claimant and scrutinised the medical records and he assessed the disability as 22% sustained.

9.RW1, Ponnusamy, the conductor of the bus, had adduced evidence stating that while the bus was proceeding from Gobichettipalayam to Kounthapadi at normal speed on the left side of the road, the motorcyclist was coming in a rash and negligent manner and lost his control and dashed against the left side tyre of the bus.

10.After considering the evidence of PW1, PW2 and RW1 and documents, which were marked as exhibits, the learned Tribunal had come to the conclusion that the accident had occurred only due to the rash and negligent driving of the first respondent, driver of the second respondent Corporation bus, therefore the second respondent/Transport Corporation Ltd., is liable to pay compensation and awarded the compensation as follows:

- i. Rs.46,800/- under the head of loss of income,
- ii.Rs.15,000/- under the head of medical expenses,
- iii.Rs.5,000/- under the head of pain and suffering,
- iv.Rs.2,000/- under the head of nourishment,

In total, the Tribunal awarded a sum of Rs.68,800/- as compensation to the petitioner, together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation. Further, the Tribunal directed the second respondent to deposit the compensation amount of Rs.68,800/- together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, within a period of one month from the date of its order. In turn, the said amount to be deposited, under a fixed deposit scheme, in a nationalised bank for a period three years. Accordingly ordered.

11. Aggrieved by the said Award and Decree, the appellant/second respondent has filed the above appeal praying to scale down the award and decree passed by the Tribunal.

12. The learned counsel appearing for the appellant argued that the Tribunal had awarded a sum of Rs.46,800/- under the head of loss of income, after adopting multiplier method, which is an erroneous. Further, the Tribunal without proper medical bills awarded a sum of Rs.15,000/- under the head of medical expenses. The PW2, Dr. Periasami had assessed the disability at 22%/- which is on the higher side and the Tribunal had not considered the said aspects properly. Hence, he prays to scale down the compensation amount awarded by the Tribunal.

13. The learned counsel for the first respondent/claimant argued that the claimant had sustained bone fracture injuries in his right hand fingers. Further, surgical operation was also conducted in the injured areas. Now, the claimant is not able to use his right hand fingers in a normal way. As such, the award under the head of pain and suffering and nourishment are on lower side. As such, the appeal is not maintainable and the learned counsel prays before this Court to dismiss the appeal.

14. Considering the facts and circumstances of the case, the arguments advanced by the learned counsel appearing on either side and the award and decree passed by the Tribunal, this Court is of the view that the quantum of compensation is fair and equitable. As such, this Court confirms the award and decree passed by the Tribunal. But, there is a discrepancy in the break up of the compensation, this Court decided to restructure the compensation as follows:

- i. The Tribunal awarded a sum of Rs.46,800/- under the head of loss of income, due to 22% disability, this Court reduces it to Rs.44,000/-,
- ii. The Tribunal awarded a sum of Rs.5,000/- under the head of pain and suffering, this Court enhances it to Rs.10,000/-,
- iii. The Tribunal awarded a sum of Rs.15,000/- under the head of medical expenses, this Court reduces it to Rs.10,000/-,
- iv. The Tribunal awarded a sum of Rs.2,000/- under the head of nutrition, this Court confirms the same as it is pertinent,
- v. This Court awards a sum of Rs.2,800/- under the head of transport expenses,

15. On 19.07.2006, this Court directed the appellant/second respondent to deposit the 50% of the award amount, into the credit of

the M.C.O.P.No.410 of 2004, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Gobichettipalayam. Now, this Court hereby directed the appellant/second respondent to deposit the remaining compensation amount with accrued interest and costs as observed by the Tribunal, into the credit of the M.C.O.P.No.410 of 2004, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Gobichettipalayam, within a period of six weeks from the date of receipt of a copy of this order.

16.As the accident had happened in the year 2004, the claimant/first respondent is at liberty to withdraw the entire compensation amount with accrued interest thereon and costs, lying in the credit of the M.C.O.P.No.410 of 2004, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Gobichettipalayam, by making proper payment out application, subject to the deduction of withdrawals, if any, in accordance with law.

17.In the result, this Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 31.08.2005, in M.C.O.P.No.410 of 2004, passed by the Motor Accident Claims Tribunal, Principal Sub Court, Gobichettipalayam is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

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To

1.The Motor Accident Claims Tribunal,
Principal Sub Court, Gobichettipalayam.

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

1 cc to Mr.A.Babu, Advocate, Sr.No.72648

1 cc to Mr.Ma.P.Thangavel, Advocate, Sr.No.68783

Order in
C.M.A.No.2062 of 2006

BVN {CO}
TP/22.11.2010.