

The Managing Director. Vs. Girija

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Court : Chennai

Decided On : Jul-26-2012

Judge : R. Karuppiyah, J.

Acts : [Motor Vehicles Act, 1988](#) - Section 173

Appeal No. : Civil Miscellaneous Appeal No.969 of 2009 And M.P.No.1 of 2009

Appellant : The Managing Director

Respondent : Girija

Advocate for Def. : Mr.R.Nithyanandam, Adv

Advocate for Pet/Ap. : Mr.N.Anand, Adv

Judgement :

Prayer:- This Civil Miscellaneous Appeal is directed under Section 173 of the [Motor Vehicles Act, 1988](#), against the award and decree passed in M.A.C.T.O.P.No.477 of 2005, on the file of Motor Accident Claims Tribunal, Ponneri, dated 06.03.2008.

JUDGMENT

1. The appellant / respondent in the above said Original Petition, has filed the Civil Miscellaneous Appeal as against the award and decree passed in

M.A.C.T.O.P.No.477 of 2005, dated 06.03.2008, by the Motor Accident Claims Tribunal, Ponneri.

2. The respondent / claimant has filed claim petition for compensation of a sum of Rs.2,00,000/- for the motor accident occurred on 28.09.2003.

3. Briefly, the case of the respondent / petitioner is that on 28.09.2003, at about 13.30 hours, while the petitioner was a pillion rider in a Yamaha Motor Cycle bearing Registration No.TN21-V-1164, travelling from Karanodai to Redhills and at that time, the driver of the bus bearing Registration No.TN21-N-0578, drove the bus in a rash and negligent manner and dashed against the motorcycle and due to that accident, the petitioner was sustained multiple and grievous injuries and the accident was occurred only due to rash and negligent driving of the appellant/respondent bus driver. The petitioner was admitted at C.M.C Government Stanley Hospital and taking treatment inpatient for three months in spite of it, she sustained permanent disability and unable to do any work. The age of the petitioner at the time of accident was 20 years and she was a labour in pencil factory, Kavanakarai, Puzhal, Chennai and earned a sum of Rs.150/- per day. Therefore, the respondent / petitioner has claimed a compensation of a sum of Rs.2,00,000/- from the appellant / respondent Corporation.

4. The appellant / respondent has filed a counter affidavit, in which, it is denied the manner of the accident as stated in the petition and stated that on the date of alleged accident, the driver-Damodaran and Conductor-Bhamagnanam were on duty in route No.200-P, bearing Registration No.TN21-N-0578 and the respondent-bus started from Ponneri at about 13.00 hours and proceeded towards Chennai and at about 13.30 hours, when the respondent-bus driver stopped the bus at Cholvaram bus stop, in order to enabling passengers to get down and while so, the petitioner along with two male members came in a Yamaha Motor Cycle bearing Registration No.TN21-U-1167, could not control the motorcycle and dashed themselves with the stationed appellant/respondent-bus, on the left side and the petitioner sustained simple injury and there were no injuries to the male members. Therefore, the bus driver has not committed any accident and the rider of the motorcycle alone caused the above said accident and the owner and insurer

of the above said motorcycle are necessary party and the rider of the motorcycle did not have any valid driving licence at the time of accident and also in the motorcycle, two persons have travelled as pillion rider. It is further stated in the counter affidavit that the age, occupation, monthly income, nature of injuries, period of treatment, medical expenses and percentage of liability are all to be proved by the petitioner and the claim of compensation is highly excessive.

5. Before the trial Court, on the side of the claimant, the injured petitioner has deposed as P.W.1. and also examined Dr.Thiyagarajan as P.W.2 and marked four documents as Exs.P1 to P4 viz., Ex.P1-First Information Report, Ex.P2-Accident Register, Ex.P3-Medical Report and Ex.P4-Wound Certificate. On the side of the appellant / respondent has not examined any witnesses and not marked any documents.

6. Considering the oral and documentary evidence adduced on the side of the claimant, the trial Court has discussed in detail and held that the accident was occurred only due to rash and negligent driving of the appellant/respondent bus driver and awarded a compensation of a sum of Rs.71,500/- on various heads with interest at the rate of 7.5% from the date of petition.

7. Aggrieved over the above said award and decree, the appellant/respondent has filed this Civil Miscellaneous Appeal.

8. Even though, the appellant has stated in the appeal memorandum that the trial Court has erred in concluding the accident took place only due to carelessness and negligence on the side of appellant/respondent driver, but at the time of argument, the learned counsel for the appellant has not seriously objected the above said finding. Further, before the trial Court, to prove the negligence aspect, the petitioner, who is injured has deposed as P.W.1 and also got marked Exs.P1 to P4 viz., Ex.P1-First Information Report, Ex.P2-Accident Register, Ex.P3-Medical Report and Ex.P4-Wound Certificate.

9. On a perusal of the above said oral and documentary evidence reveal that the accident was occurred only due to rash and negligent driving of the appellant/respondent bus driver, no contra evidence on the side of the

appellant/respondent and therefore, the Tribunal has correctly held that the accident was occurred only due to rash and negligent driving of the respondent-bus driver. With regard to grant of compensation, the Tribunal has passed the award on various heads as under:-

For 40% disability..Rs. 40,000.00

Medical expenses..Rs. 5,000.00

Transportation..Rs. 3,000.00

Extra Nourishment..Rs. 4,000.00

Pain and suffering..Rs. 5,000.00

Loss of earning power..Rs. 10,000.00

Damage to clothes and articles..Rs. 2,000.00

Loss of income during

treatment period..Rs. 2,500.00

Total..Rs. 71,500.00

10. In the claim petition, the age of the petitioner is stated as 20 years at the time of accident. In the above said fact was not denied by the respondent, but the appellant denied the avocation and income of the petitioner as if she was working in a pencil factory and earned a sum of Rs.150/- per day. Admittedly, there is absolutely no reliable, oral and documentary evidence, except the petitioner's oral testimony to prove the avocation and income of the injured-petitioner. The Tribunal has discussed and correctly fixed the income of the petitioner as Rs.2,500/- per month.

11. With regard to the compensation, the learned counsel for the appellant has mainly contended that the Tribunal has awarded a sum of Rs.5,000/- for medical expenses, but the petitioner was taking treatment only in Government Hospital and therefore, the trial Court has wrongly awarded a sum of Rs.5,000/- under the head of 'medical expenses' and also contended that the Tribunal has awarded a sum of Rs.10,000/- under the head of 'loss of earning power', which is excessive. With regard to other heads, the learned counsel for the appellant has not seriously objected.

12. Admittedly, the petitioner was sustained injuries and from the oral evidence of P.W.1 and Ex.P2-accident Register, Ex.P3-Medical Certificate and Ex.P4-disability Certificate reveal that the petitioner was sustained 40% disability and the doctor has assessed the disability as 40% partial and permanent disability. The petitioner has not proved that after the accident, she was not working as before the accident due to the disability and therefore, the Tribunal has not adopted the multiplier method for calculating the loss of income and calculated 40% disability and taken as Rs.1,000/- for 1% disability. Therefore, the Tribunal has correctly awarded a sum of Rs.40,000/- for permanent disability.

13. With regard to the medical expenses, the Tribunal has awarded a sum of Rs.5,000/-. Admittedly, in the petition it was stated that the petitioner was taking treatment for three months as inpatient, but the petitioner has not produced relevant documentary evidence to prove the same. Any how, considering the nature of the injuries, period of treatment, disability sustained by her, the Tribunal has awarded only a meagre amount of Rs.5,000/- under the head of medical expenses, which is reasonable amount and no need to interfere with the above said finding.

14. With regard to loss of earning power, the learned counsel for appellant has stated that it is excessive. As already stated that the petitioner has sustained grievous injuries and taking treatment even then, she sustained 40% disability. Considering the nature of injuries, treatment, disability and other factors, the above said amount also not excessive as contended by the learned counsel for the appellant.

15. The learned counsel for the appellant has not seriously objected the amount awarded by the Tribunal as regards other heads. Considering the age, nature of injuries, period of treatment and disability of 40%, the Tribunal has correctly awarded for other heads, viz., Rs.3,000/- for transportation, Rs.4,000/- for extra nourishment, Rs.5,000/- for pain and sufferings and Rs.2,000/- for damages to cloth and articles and Rs.2,500/- for loss of income during treatment period and therefore, the Trial Court has discussed in detail and passed just and reasonable award for all heads as discussed earlier and therefore, no need to interfere with the above said finding.

16. In the result, the Civil Miscellaneous Appeal is dismissed and the award and decree passed in M.A.C.T.O.P.No.477 of 2005, dated 06.03.2008, by the Motor Accident Claims Tribunal, Ponneri is confirmed. No costs. Consequently connected miscellaneous petition is closed.

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