



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.71 of 2010

Murugan
S/o Sekar

.. Appellant/ Claimant

-Vs-

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Vellore

.. Respondent/ Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 14.06.2006 made in M.C.O.P.No.619 of 2002 on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Tiruvannamalai.

For Appellant :: Mr.F.Terry Chellaraja

For Respondent :: Mr.S.V.Vasanthakumar

JUDGMENT

This appeal is preferred by the injured claimant against the impugned award of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Tiruvannamalai dated 14.6.2006 made in M.C.O.P.No.619 of 2002 for enhancement of compensation.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. Learned counsel for the appellant submitted that on 11.3.2001 at about 3.55 P.M., near Tiruvannamalai new bus stand, when the appellant was standing near his TVS-50 motorcycle, the bus belonging to the respondent Transport Corporation bearing Registration No.TN-23-N-0934 came in a rash and negligent manner and dashed against the appellant, as a result of which the appellant sustained fracture of the bones in his left leg and severe injuries. However, the Tribunal, without considering the evidence, both oral and documentary, awarded only a total compensation of Rs.45,600/- as against the claim of Rs.1,00,000/-. The learned counsel also submitted that when the appellant was earning a sum of Rs.3,000/- per month as a mason, the Tribunal wrongly fixed his monthly income at Rs.1,500/- per month without any basis. The learned counsel further submitted that when P.W.2-Doctor had assessed the disability sustained by the appellant at 40%, the Tribunal wholly erred in fixing the disability at 15%. It is his further contention that when the appellant had been



taking treatment for 62 days in the hospital, the Tribunal eventually failed to consider the said aspect. Hence the learned counsel submitted that the appellant is entitled for enhanced compensation.

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4. Per contra, the learned counsel for the respondent-Transport Corporation submitted that the impugned award requires no interference, since the Tribunal has correctly arrived at the quantum of compensation after considering all the materials placed before it.

5. This Court is not able to find any merit in the submissions of the learned counsel for the respondent. It is not in dispute that the appellant met with an accident due to the rash and negligent driving of the bus belonging to the respondent-Transport Corporation on the fateful day and sustained grievous injuries. According to Ex.P3-wound certificate issued by the Government District Headquarters Hospital, Tiruvannamalai, the appellant had suffered Grade III compound fracture of both bones on the left leg and foot and has taken treatment for nearly two months in the Government hospital from 11.3.2001 to 11.5.2001. It is also seen that the external fixation was applied on 12.3.2001 and the same was removed on 11.5.2001. The said fact is also reflected in Ex.P5-discharge summary issued by the doctor attached to the Department of Orthopaedic Surgery and Traumatology, Government General Hospital, Chennai. P.W.2-doctor, who examined the victim, had also certified that the appellant had sustained 40% disability through Ex.P6-disability certificate. As rightly pointed out by the learned counsel for the appellant, the Tribunal, in the absence of any rebuttal evidence adduced by the respondent, has wrongly fixed the disability at 15% without application of mind and arrived at the loss of earning capacity at Rs.30,600/-. Since the said finding is contrary to the material documents, this Court fixes the disability at 40% in terms of Ex.P6 and awards a sum of Rs.40,000/- at the rate of Rs.1,000/- for each percentage of disability under the head "permanent disability".

6. Now coming to the head "loss of income", the Tribunal has awarded only a sum of Rs.5,000/-. According to the appellant, he was a mason and was earning a sum of Rs.3,000/- per month. But the Tribunal wrongly fixed the annual income of the appellant at Rs.18,000/- at the rate of Rs.1,500/- per month on the ground that no document was filed to prove the said claim. But this Court is of the view that the said finding of the Tribunal is erroneous, for the reason that even if a sum of Rs.100/- per day is taken into consideration, the monthly income comes to Rs.3,000/-. Hence this Court, taking into consideration the age of the appellant, is inclined to award a sum of Rs.10,000/- under the head "loss of income", since the appellant was unable to perform his work for at least a minimum period of three months. Again coming to the head "pain and sufferings", the Tribunal has awarded only a sum of Rs.5,000/-. It is to be noted that the petitioner has suffered grievous injuries of permanent nature and undergone mental agony during the period of treatment. Hence this Court is inclined to



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award a sum of Rs.20,000/- instead of the Rs.5,000/- awarded by the Tribunal. The Tribunal has awarded only a sum of Rs.5,000/- for transportation, medical expenses and attender charges. In view of the hardship faced by the appellant, this Court is inclined to award a sum of Rs.10,000/- under the said head instead of Rs.5,000/- awarded by the Tribunal, in the absence of any contra evidence let in by the respondent. The Tribunal has also not awarded any sum towards extra nourishment. Since the appellant had suffered grievous injuries and was taking treatment for almost 62 days in the hospital, this Court deems it fit to award a sum of Rs.10,000/- under the head "extra nourishment". The above aspects have not been taken into consideration by the Tribunal while passing the award.

7. In this context, it may be relevant to refer to the judgment of the Apex Court in Rajesh and others v. Rajbir Singh and others, 2013 (3) CTC 883, wherein the Apex Court, while considering the issue why the Tribunal/Court should award proper compensation irrespective of the claim and, if required, even in excess of the claim, has succinctly observed as follows:-

"19. In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal/Court has a duty, irrespective of the claims made in the Application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the Application for compensation."

8. In the light of the aforesaid ratio of the Hon'ble Apex Court and on consideration of the facts and circumstances of the case, this Court finds that a sum of Rs.90,000/- would be a just, equitable, fair and reasonable compensation to be awarded to the appellant. Accordingly, the award of the Tribunal is modified and a total compensation of Rs.90,000/- (Rupees ninety thousand only) is awarded to the appellant under the following heads:-

(i) Permanent Disability	-	Rs.40,000/-
(ii) Loss of income	-	Rs.10,000/-
(iii) Pain and sufferings	-	Rs.20,000/-
(iv) Transportation, medical expenses and attender fees-		Rs.10,000/-
(v) Extra nourishment	-	Rs.10,000/-

Total compensation		Rs.90,000/-



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respondent-Transport Corporation is directed to deposit the enhanced compensation amount to the credit of the M.C.O.P.No.619 of 2002 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Tiruvannamalai, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant is entitled to withdraw the same on proper application made before the Tribunal.

9. The civil miscellaneous appeal is disposed of on the above terms. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ss

To

The Principal Subordinate Judge
Motor Accidents Claims Tribunal
Tiruvannamalai

1 cc to M/s. M. Malar, Advocate, Sr. 60805

1 cc Mr.S.V. Vasanthakumar, Advocate, Sr. 60866

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