

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.125 of 2016 and
C.M.P. No.1118 of 2016

Metropolitan Transport Corporation
Chennai Limited,
rep. by its Managing Director,
Pallavan Salai, Chennai-2. .. Appellant/Respondent

Versus

M.Munuswamy .. Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 25.03.2014 made in M.C.O.P.No.4394/2009 on the file of the Motor Accidents Claims Tribunal, (III Judge, Small Causes Court), Chennai.

For Appellant : Mr.S.Sivakumar

For Respondent : Mr.K.Varadha Kamaraj for
Mr.B.S.Padmanabhan

J U D G M E N T

The Civil Miscellaneous Appeal, filed by the appellant/transport Corporation, is directed against the correctness of the impugned award dated 25.03.2014 made in M.C.O.P.No.4394/2009 on the file of the Motor Accidents Claims Tribunal, (III Judge, Small Causes Court), Chennai.

2.According to the claimant, on 02.08.2009 at about 17.35 hours, while the claimant was driving the auto rickshaw bearing Registration No.TN-10-N-6549 on Kunnur High Road, a bus bearing Registration No.TN-01-N-8034, was driven by its driver in a rash and negligent manner from the opposite direction and dashed against the auto rickshaw. Thereby, the claimant sustained grievous injuries. According to the claimant, the accident was occurred due to the rash and negligent driving made by the driver of the bus. The claimant claimed a sum of Rs.12,00,000/-

towards compensation. The appellant-Transport Corporation resisted the claim.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus and awarded a sum of Rs.6,79,300/- as compensation payable to the claimant with interest at the rate of 7.5% per annum. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4. Learned counsel appearing for the appellant-Transport Corporation would submit that the Tribunal has failed to fix contributory negligence on the part of the claimant, when sufficient evidence were produced before it. He would further submit that one Thiagarajan, who lodged a complaint, was not examined on the side of the claimant. Learned counsel appearing for the appellant questioned the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and that therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. Learned counsel appearing for the respondent/claimant submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard both the learned counsel and perused the materials available on record.

7. According to the claimant, he was aged about 27 years. The Tribunal has fixed the age of the claimant at 29 years, as per Ex.P4/copy of driving licence, in which the date of birth of the claimant is mentioned as 12.04.1980. According to him, he was an Auto Rickshaw Driver and was earning Rs.7,500/- per month. The Tribunal has fixed the income of the claimant at Rs.6,500/-. P.W.1-claimant stated in his evidence that while he was driving the auto rickshaw on Kunnur High Road, a bus belonging to the appellant Transport Corporation, was driven by its driver in a rash and negligent manner from the opposite direction and dashed against the auto rickshaw. According to the claimant, the accident was occurred due to the rash and negligent driving made by the driver of the bus. As a result, he sustained fracture and multiple grievous injuries. He had taken treatment as inpatient at Government KMC Hospital from

03.08.2009 to 22.08.2009. He had suffered fracture neck of femur right. Cancellous screw fixation was done on 06.08.2009. Ex.P3/ Discharge Summary shows that he had taken inpatient treatment at the above hospital from 19.11.2012 to 09.01.2013 and during the said period, implants were removed and replaced by artificial steel, total hip joint replacement-THR right hip was done. Ex.P5/Disability certificate issued by P.W.2/Dr.Saichandran also speaks about the same. A case in Crime No.299 of 2009 was registered on the file of Inspector of Police, Traffic Investigation, K4 Annanagar, Chennai, as against the driver of the vehicle.

8.After considering the above oral and documentary evidence, the Tribunal awarded a sum of Rs.1,20,000/- (2000x60%) towards 60% permanent disability on the basis of percentage method, though P.W.2 Doctor Saichandran examined the claimant and issued Ex.P7/Disability Certificate and assessed the disability at 65%. Thus, the same is confirmed as it is. After considering the nature of injuries sustained by the claimant, the Tribunal awarded a sum of Rs.15,000/- towards Transport to Hospital, Rs.15,000/- towards Extra Nourishment, Rs.1,000/- towards damage to clothing and article, Rs.10,000/- towards attendant charges, Rs.20,000/- towards loss of amenities and a sum of Rs.3,97,800/- towards loss of earning capacity, which are considered to be the reasonable amount, fixed by the Tribunal, hence, this Court finds it reasonable to confirm the same under the heads afore mentioned and the same is hereby confirmed. As per the contention made by the learned counsel for the appellant, as the Tribunal has also awarded a sum of Rs.1,20,000/- towards permanent disability and a sum of Rs.3,97,800/- towards loss of earning capacity, a sum of Rs.45,500/- awarded towards loss of income and a sum of Rs.15,000/- awarded towards medical expenses are unwarranted and hence the same may be deleted. Therefore, considering his submission, this Court finds it reasonable to set aside the above heads. Accordingly, a sum of Rs.45,500/- awarded towards loss of income and a sum of Rs.15,000/- awarded towards medical expenses are set aside. Learned counsel for the appellant contended that as the claimant has suffered simple injuries, a sum of Rs.40,000/- awarded towards pain and suffering needs to be modified. This Court finds that a sum of Rs.40,000/- awarded towards pain and sufferings is excessive and exorbitant, as per the contention made by the learned counsel for the appellant. Hence, a sum of Rs.20,000/- is hereby awarded towards pain and suffering as against the sum of Rs.40,000/-, awarded by the Tribunal. The details of the modified compensation as per the above discussion are as under:-

Transport to Hospital	Rs. 15,000/-
Extra Nourishment	Rs. 15,000/-
Damage to clothing and article	Rs. 1,000/-
Attender charges	Rs. 10,000/-
Loss of amenities	Rs. 20,000/-
Pain and sufferings	Rs. 20,000/-
Permanent Disability	Rs.1,20,000/-
Loss of earning capacity	Rs.3,97,800/-

Total	Rs.5,98,800/-

Therefore, the claimant is entitled to the modified compensation of Rs.5,98,800/- with interest at the rate of 7.5% per annum, as against the sum of Rs.6,79,300/- awarded by the Tribunal as compensation.

9.Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant to move a petition before the Tribunal for withdrawing the said amount.

10.With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected CMP. is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Motor Accidents Claims Tribunal,
(III Judge, Small Causes Court), Chennai.

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

1 cc to Mr.S.Sivakumar, Advocate, sr.6298

1 cc to Mr.K.Varadhakamaraj, Advocate, sr.5524

C.M.A. No.125 of 2016

pvs co

kra 27.06.2016