

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2350 of 2016

The Managing Director
Metropolitan Transport Corporation
Pallavan House, Anna Salai
Chennai-2
...Appellant/Respondent

-vs-

S.Sundaram
..Respondent/Partitioner

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 12.08.2013 made in M.C.O.P.No.5125 of 2010 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge No.II), Chennai.

For Appellant :: Mr.K.S.Suresh

JUDGMENT

The Managing Director of Metropolitan Transport Corporation Limited, Chennai, aggrieved by the impugned award passed by the Motor Accident Claims Tribunal (Special Subordinate Judge No.II), Chennai in M.C.O.P.No.5125 of 2010 dated 12.8.2013 awarding a compensation of Rs.3,20,000/- with interest at the rate of 7.5% per annum, as against the claim of Rs.6,00,000/-, for the multiple grievous injuries sustained by the claimant, aged about 29 years, working as a Painter in the accident caused by the driver of the bus belonging to the Transport Corporation, has brought this appeal questioning the quantum.

2. Heard the learned counsel for the appellant.

3. It is a case of multiple injuries sustained by the injured claimant, S.Sundaram, aged about 29 years, who claimed that he was carrying on the work of painting and earning a sum of Rs.300/- per day. However, while he was riding his motorcycle bearing Registration No.TN 21 AY 2688 on the Valluvar Kottam High Road, near Valluvar Kottam bus stand Nugambakkam, Chennai on 9.11.2010 at about 12.40 hours, one MTC bus bearing

Registration No.TN 01 N 5191 driven by its driver in a rash and negligent manner, came and hit on the rear side of the motorcycle and in view of the sudden impact, he was thrown off the motorcycle and thereby sustained grievous injuries including fracture. Immediately he was taken to Government Royapettah Hospital, Chennai and after first aid treatment, he was shifted to a private hospital. The finding of the Tribunal shows that the injured was taking treatment as an in-patient from 10.11.2010 to 13.11.2010 and again as an in-patient from 24.11.2010 to 28.11.2010, as evidenced from the discharge summary, Ex.P7 for the fracture injuries. Therefore the Tribunal has come to the conclusion that when the injured was taking treatment as an in-patient for ten days, he would have incurred huge expenditure towards transportation apart from pain and suffering. However, going to the main question whether there was any negligence on the part of the driver of the offending vehicle belonging to the Transport Corporation, taking support from the First Information Report, Ex.P2 registered in Crime No.324/TN1/2010 on 9.11.2010 against the driver of the MTC bus bearing Registration No.TN 01 N 5191 for the offence under Sections 279 & 337 of IPC for his rash and negligent driving, the Tribunal has come to the conclusion that the driver of the bus belonging to the appellant was negligent in causing the accident, after accepting the evidence of P.W.1 injured witness deposing that there was a rash and negligent driving by the driver of the bus, which was corroborated by the FIR, Ex.P2. After deciding the issue of negligence, the Tribunal has rightly saddled the vicarious liability on the appellant for the negligent act of its driver.

4. While going to the fixation of compensation under different heads, the discharge summary, Ex.P7 has shown that the injured was taking treatment as an in-patient for a period of ten days as aforementioned in both the hospitals, namely, Government Royapettah Hospital and New Hope Medical Centre, Chennai. Thereafter, accepting the avocation of the injured as a Painter, the Tribunal has fixed a sum of Rs.4,500/- as the notional monthly income, but without giving any finding with regard to how long he was taking treatment as an in-patient and also as out-patient, it has awarded a sum of Rs.1,00,000/- towards the loss of future earning. However, considering the fact that the injured was not able to attend to his work for about three months, this Court is inclined to award a sum of Rs.20,000/- only towards loss of earning during the period of treatment, instead of Rs.1,00,000/- awarded by the Tribunal without any basis. While coming to the award of compensation under the head of partial permanent disability, this Court finding that since the injured was taking treatment for about ten days as an in-patient in both the Government Royapettah Hospital and New Hope Medical Centre, Chennai and had also sustained fracture injuries in both bones in his right leg with

pelvic ring fracture as per Ex.P7 discharge summary, for which he underwent intra medullary nailing of tibia on 10.11.2010 and external fixation was also done and since short 9 mm nail through the entry point distal and proximal fixation with screws were also done, relying upon the evidence adduced by the doctor Mr.K.J.Mathiyazhagan, who was examined as P.W.2, along with the disability certificate, Ex.P10, the Tribunal has accepted 50% disability, as the injured was aged about 29 years, and fixed a sum of Rs.1,00,000/- at the rate of Rs.2,000/- per percentage of disability, which is reasonable. Towards pain and suffering, a sum of Rs.25,000/- only has been awarded. As mentioned above, when the injured had taken treatment as an in-patient from 10.11.2010 to 13.11.2010 and again from 24.11.2010 to 28.11.2010 for a period of ten days in both the Government Royapettah Hospital and New Hope Medical Centre, Chennai, he would have definitely undergone pain and suffering, for which this Court is inclined to award a sum of Rs.75,000/- instead of Rs.25,000/-.

5. With regard to extra nourishment, a sum of Rs.10,000/- only has been awarded. As he was taking treatment as an in-patient and during he period of treatment, he was fixed with 9 mm nail and also screws, that would show that he had sustained grievous injuries, for which extra nourishment is required, therefore, this Court fixes a sum of Rs.25,000/- for extra nourishment. With regard to attender charges, the Tribunal has awarded only Rs.5,000/- and the same is increased to Rs.20,000/-. Towards transportation charges, a reasonable sum of Rs.10,000/- has been awarded by the Tribunal. Regarding the medical bills, the injured has produced two bills under Ex.P8 series, which would clearly show the name of the injured to the extent of Rs.54,940/-, since both the bills were issued by New Hope Medical Centre where the injured was taking treatment in two spells. Therefore, the Tribunal, accepting the discharge summaries issued by the said hospital under Exs.P7 & P8, has awarded a sum of Rs.55,000/- towards the medical expenses being incurred by the injured. This Court is also inclined to award a sum of Rs.15,000/- towards damage to clothes and articles. Therefore, this Court, only modifying the amount of compensation under different heads, does not find any merit in the appeal, since the injured has sustained multiple and grievous injuries. Accordingly, the civil miscellaneous appeal stands disposed of with the above modification. Consequently, C.M.P.No.16399 of 2016 is closed.

6. Since only the statutory amount of Rs.25,000/- has been deposited, the appellant Transport Corporation is directed to deposit the balance award amount along with interest to the credit of the M.C.O.P.No.5125 of 2010 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge No.II), Chennai within a period of four weeks from the date of receipt

of a copy of this order and the claimant is entitled to withdraw the entire amount along with accrued interest by moving appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ss

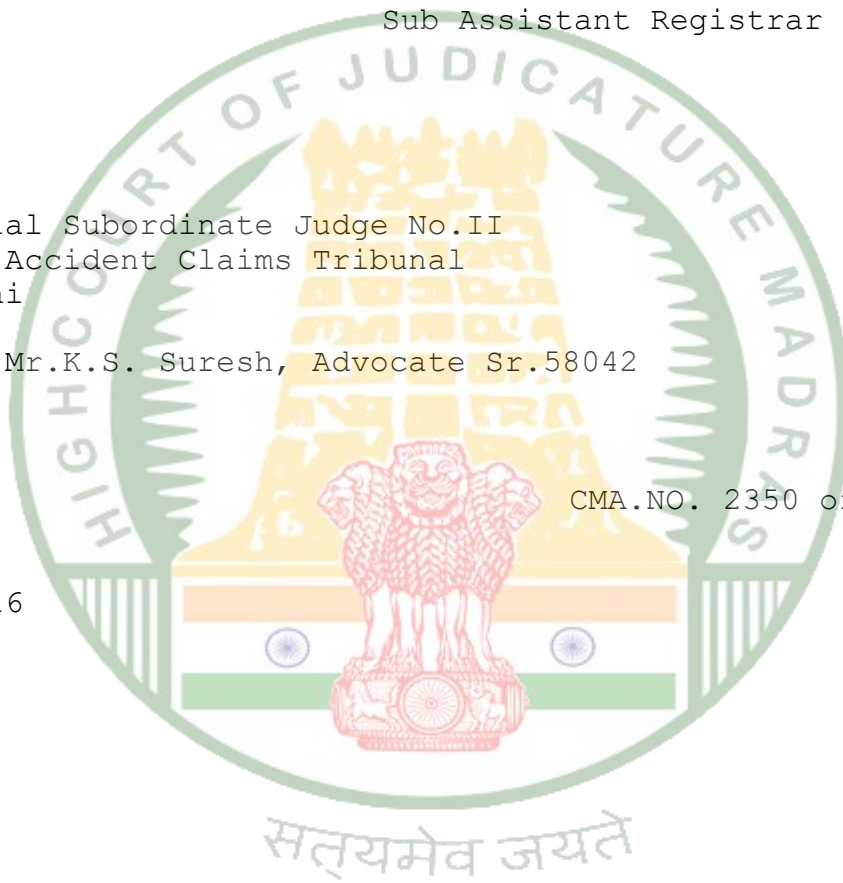
To

The Special Subordinate Judge No.II
Motor Accident Claims Tribunal
Chennai

+ 1 cc to Mr.K.S. Suresh, Advocate Sr.58042

CMA.NO. 2350 of 2016

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