

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.248 of 2010

P.Balamurugan

... Appellant/Petitioner

vs.

The Managing Director,
Tamilnadu State Transport Corporation Limited,
Salem Division I, Ltd.,
12, Ramakrishna Road,
Salem-7.

... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 30.09.2009 made in M.C.O.P.No.498 of 2006 on the file of the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court No.I,) Salem.

For petitioner: Mr.R.Marudhachalamurthy

For Respondent: No Appearance

JUDGMENT

The appellant, who is the claimant in MCOP.No.498 of 2006 and he filed a claim petition claiming a compensation of Rs.2,00,000/- for the injuries sustained by him.

2. The appellant, who is the claimant filed the claim petition in MCOP.No.498 of 2006 for the injuries sustained by him in the accident that took place on 18.02.2006 at about 8.30 p.m. While he was walking on the side of pallipalayam to Sankari Main Road at chinnarpalayam Vaikkalmedu towards sankari, a bus bearing Reg.No.TN.30 N 0093, which was driven by its driver in a rash and negligent manner, hit against the appellant. Due to the said accident, the appellant had sustained fracture in his left elbow, left wrist joint and severe pain in his left shoulder. Initially, he was admitted in Government Hospital, Pallipalayam for first-aid and subsequently, referred to Government General Hospital, Erode and he was admitted as in-patient from 19.02.2006 to 03.03.2006 and

taken treatment at Pondicherry. Due to the accident, the claimant is totally incapacitated and he is unable to work without support of others. The accident occurred only due to the rash and negligent driving of the driver of the bus. Therefore, he claimed compensation against the respondent.

3. According to the appellant/claimant, he was working as Power loom operator and was earning a sum of Rs.5,000/- p.m. and claimed a sum of Rs.2,00,000/- as compensation for injuries sustained by him in the alleged accident.

4. The respondent filed counter statement and denied all the averments made in the claim petition and submitted that the appellant must prove his age, income and and the appellants have to prove the manner in which the accident had occurred. In any event, the compensation claimed is excessive.

5. Before the Tribunal, the appellant/claimant examined himself as P.W.1 and Dr.Sampathkumar, was examined as P.W.2, and 7 documents were marked as Ex.P.1 to P.7 on the side of the appellant. On the side of the respondent, no oral and documentary evidence was let in.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only due to the rash and negligent driving of the driver of the respondent's vehicle. The Tribunal awarded a sum of Rs.52,267/- as compensation under the following heads.

Permanent disability	Rs.35,000/-
For three injuries	Rs.11,000/-
Medical expenses	Rs.6,267/-
Total	Rs.52,267/-

7. Being not satisfied with the compensation awarded by the Tribunal, the claimant is before this Court by way of this appeal.

8. Learned counsel for the appellant/claimant submitted that due to the injuries sustained by the first respondent in the accident, he is unable to move without the help of others and the doctor has assessed the disability at 35%. He further submitted that he was repeatedly admitted in different hospitals for taking treatment as inpatient. The amount awarded by the Tribunal under the other heads are also on the lower side and hence, they have to be enhanced.

9. I have heard the learned counsel appearing for the appellant and perused all the materials available on record.

10. The appellant was examined as P.W.1 and he has deposed that due to the injuries suffered by him, he is not able to work as he was doing earlier. In the absence of any evidence, let in by respondent to disprove disability, the Tribunal has awarded the compensation based on the disability certificate and wound certificate. But at the same time, it is to be noted that the Tribunal has awarded compensation for loss of income at Rs.1000/- per percentage of disability and awarded a sum of Rs.35,000/-. ($35\% \times 1000 = \text{Rs.}/35,000/-$). The said amount is too meager.

11. This Court, on considering the facts and circumstances of the case, the appellant has suffered disability at 35% and hence, awards Rs.70,000/- towards permanent disability by fixing Rs.2,000/- per percentage of disability ($35 \times \text{Rs.2,000/-} = \text{Rs.70,000/-}$). The appellant was taking treatment as inpatient from 19.02.2006 to 03.03.2006. The Tribunal has not granted any compensation towards attender charges, extra nourishment and pain and sufferings. Hence the compensation is reassessed as follows:

Permanent disability ($35\% \times \text{Rs.2,000/-}$ per percentage = Rs.70,000/-)	Rs.70,000/-
For three injuries	Rs.11,000/-
Medical expenses	Rs. 6,267/-
Pain and sufferings	Rs.15,000/-
Extra nourishment	Rs.20,000/-
Attender charges	Rs.10,000/-
Total	Rs.1,32,267/- rounded to Rs.1,32,300/-

12. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.52,267/- (Fifty two thousand two hundred and sixty seven only) to a sum of Rs.1,32,300/- (One Lakh thirty two thousand and three hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of deposit and proportionate costs;

(ii) The appellant/claimant is directed to submit his Savings Bank Account Detail along with the copy of his passbook to the Tribunal forthwith;

(iii) The respondent/Transport Corporation is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.A.C.O.P.No.498 of 2006, on the file of the Motor Accident Claims Tribunal (Fast Track Court No.I) Additional District Court, Salem, within a period of twelve weeks from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal is directed to transfer the enhanced award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellant/claimant, through RTGS/NEFT system, after getting his Account Details, within a period of two weeks thereafter; and

(v) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kkd
To

The Motor Accident Claims Tribunal,
(Additional District Judge/Fast Track Court No.I,) Salem.

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CMA.No.248 of 2010

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