

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.1904 of 2006

The Managing Director,
Tamilnadu State Transport Corporation,
(Villupuram Division -I),
Villupuram, ... Appellant

Versus

Dhavamani ...Respondent

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.09.2005 made in M.A.C.T.O.P.No.161 of 1999 on the file of the Motor Accident Claims Tribunal (II Additional Sub Court), Villupuram.

For Appellant : Mr. P.G.Padmanabhan

For Respondent : M.A.Thamizharasan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 27.09.2005 made in M.A.C.T.O.P.No.161 of 1999 on the file of the Motor Accident Claims Tribunal (II Additional Sub Court), Villupuram.

2. The brief facts of the case leading to the claim application are as follows :

On 03.02.1991 at about 1.45 p.m., when the petitioner was travelling in the Motorcycle bearing Reg. No.TN D 118 as pillion rider, the bus which belonged to the respondent was driven by its driver in a rash and negligent manner and hit against the vehicle, due to which, the petitioner sustained severe injuries. The petitioner has also stated that he is a student in the Polytechnic College and he had sustained disability and his education was also very much affected and hence, he claimed a sum of Rs.1,00,000/- as compensation.

3. The respondent denied the mode of accident and also stated that the sum claimed by the claimant under various heads is excessive. The other grievance raised by the respondent Transport Corporation is that the owner and insurer of the two wheeler was not added as necessary parties. Hence the claim application is liable to be dismissed.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that it is the driver of the bus, who was driving the same in a rash and negligent manner and dashed against the two wheeler in which, the petitioner was travelling as pillion rider. Hence, the Tribunal has given finding that when the rash and negligent driving is on the part of the driver of the bus, the owner and the insurer of the two wheeler need not be added as a necessary party. The Tribunal has assessed the nature of injury, age and inconvenience and disability sustained by the claimant and awarded a sum of Rs.1,00,000/- as compensation under various heads as follows:

Heads	Amount awarded by the Tribunal
For Disability	50,000.00
For Loss of Future Income	25,000.00
For two simple injuries	10,000.00
For Pain and Sufferings for two grievous injuries (Rs.10,000/-) and simple injuries (Rs.2,000/-)	12,000.00
For Nourishment	3000.00
TOTAL	1,00,000.00

Aggrieved against the said award, the Transport Corporation has preferred this appeal.

5. In the grounds of appeal, the appellant has stated that the monthly income fixed by the Tribunal at Rs.5,000/- is excessive and for the future loss of income, the sum awarded under the head at Rs.20,000/- was without any document and hence, it is not proper. The sum of Rs.50,000/- awarded for the disability at 40% is highly excessive and the sum awarded for the simple injuries at Rs.10,000/- and for pain and sufferings at Rs.12,000/- and Rs.3,000/- for nourishment are all highly excessive. On the whole, the sum awarded by the Tribunal is highly excessive and the interest at 7.5% is also very much on the higher side.

6. Heard the appellant side and perused the documents available on record.

7. On a perusal of the Judgment, it is observed that due to the said accident, the respondent/claimant had sustained serious injuries. The claimant has also sustained fracture injuries in his right leg knee and right forearm in the wrist and also injuries all over the body. He was also treated in the Hospital at Villupuram and further treatment in Jipmor Hospital, Pondicherry. He was also given treatment as out patient and because of the fracture injury in his right leg, he sustained disability and the height of the leg has been reduced to some extent. PW2, the Doctor who spoken about the disability sustained by the claimant had stated that his right wrist is not appeared straight and he had also given an opinion that his right wrist is not in normal and good condition because of the fracture injuries sustained by the claimant. The power of holding the objects is also very much reduced and the fracture in the right leg is also very much causes disability and the Doctor has assessed the disability at 40% by furnishing Ex.P11 disability certificate.

8. The Tribunal after analysing the nature of injury as stated in the accident register Ex.P3, a number of grievous injuries and also simple injuries in various parts of the body and by taking into consideration the disability sustained by the claimant found that the percentage assessed by the Doctor is proper. The Tribunal has also observed that even during the training period, the respondent/claimant was earning Rs.5000/- and by taking his age at 23, his disability at 40%, the Tribunal has awarded a sum of Rs.25,000/- for loss of future income and for the disability at Rs.50,000/- was very much reasonable. The pain and sufferings for the grievous injuries and simple injuries were also taken up for consideration by the Tribunal by considering the fact that the claimant is an Engineering student and he was also earning even during the time of education by way of training. Hence, the sum arrived by the Tribunal by taking the disability in the proper sense being a Engineering student and his loss of earning power and the pain and sufferings and the nourishment at Rs.3000/- is also very much reasonable and not on the higher side as argued by the learned counsel for the appellant.

9. In view of the above, this Court is of the view that the award passed by the Tribunal by considering the documents and evidence, is proper and does not warrant any interference with the award passed by the Tribunal.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

11. Accordingly, the appellant/ Transport Corporation is directed to deposit the entire award amount by the Tribunal, with interest and costs, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

uma

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
II Additional Sub Court,
Villupuram.

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

+1cc to Mr.P.G.,Padmanabhan, Advocate, SR.No.73369

+1cc to Mr.A.Thamizharasan,, Advocate, SR.No.73433

C.M.A.No.1904 of 2006

Kak (23/04/2019)

सत्यमेव जयते

WEB COPY