

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.2032 of 2006

and

CMP No.8722 of 2006

The Managing Director,
State Transport Corporation
Kancheepuram.

... Appellant/Respondent

Versus

Thiru. Bhasker

.. Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.11.2004 made in M.A.C.T.O.P.No.805 of 2003 on the file of the Motor Accident Claims Tribunal (Sub Court), Thiruvallur.

For Appellant : Mr. P.G. Padmanabhan

For Respondent : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 04.11.2004 made in M.A.C.T.O.P.No.805 of 2003 on the file of the Motor Accident Claims Tribunal (Sub Court), Thiruvallur.

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

On 07.09.2003, at 12.00 hours, when the petitioner along with his brother were proceeding in Thiruvallur Theradi Street, at the time, the transport Corporation bus bearing Registration No. TN 21 N 0202 which came in the opposite direction driven by its driver in a rash and negligent manner, hit against the petitioner and caused severe injuries. The petitioner had sustained severe injuries, disability and also

incurred medical expenses and other expenses. Hence, he claimed a sum of Rs.4,00,000/- as compensation.

3. The respondent in the counter statement denied the mode of accident and also denied the age, income and occupation of the petitioner and also the sum claimed as compensation under various heads. It is also stated that the petitioner alone is responsible for the accident, because the respondent bus was about to stop at Thiruvallur Theradi at 12.00 hours, to enable the passengers to get down from the bus, dashed against the bus at the back left side and caused the accident.

4. The Tribunal, after analyzing the evidence and documents, has fixed the liability on the respondent Transport Corporation for the rash and negligent driving by its driver. The Tribunal has also assessed the nature of injury, disability, pain and sufferings and medical expenses, awarded a sum of Rs.2,60,000/- as compensation under the following heads:

Heads	Amount awarded by the Tribunal Rs.
For Loss of Income	2,00,000.00
For Pain and Sufferings	50,000.00
For Transportation	5,000.00
For Nourishment	5,000.00
For Medical expenses	-
For Attender's charges	--
For Loss of Amenities	--
TOTAL	2,60,000.00

It is seen from the total award amount that the Tribunal has erroneously calculated the total amount as Rs.3,20,000/- instead of Rs.2,60,000/-. Therefore, the same is hereby rectified by taking the total compensation amount awarded by the Tribunal as Rs.2,60,000/-. Aggrieved against the said award, the appellant Transport Corporation has preferred this appeal.

5. In the grounds of appeal, it has been denied the rash and negligent driving on the part of the driver of the bus and further stated that it is the petitioner who was very much negligent, he, himself hit against the standing bus at the back left side and invited the accident. The evidence of RW1, who is the driver of the appellant bus has not been properly considered by the Tribunal, hence the contributory negligence has to be fixed by the Tribunal on the petitioner.

The sum awarded for loss of earning power at Rs.2,00,000/- by taking monthly income at Rs.3000/- is also on the higher side and further, the sum awarded under various heads are all excess. Hence, the appellant sought for dismissal of the award passed by the Tribunal.

6. On a perusal of records, it is observed that the Tribunal has fixed the liability on the driver of the Transport Corporation bus by considering the document Ex.P1, the FIR in which, it has been clearly stated that it is the rash and negligent driving on the part of the driver of the bus which resulted in the accident and further, the charge-sheet also proves the same and confirms the rash and negligent driving on the part of the driver of the Transport Corporation bus. Hence, the liability has been fixed on the respondent Transport Corporation by the Tribunal which based on the evidence and documents, need not be interfered with. While determining the compensation, it is observed that the claimant sustained severe injuries and he was under treatment for 40 days as inpatient and there are fracture injuries in the 3, 4, 5 right leg foot bones and plastic surgery was also done to the claimant. The occupation stated by the claimant is that he was doing building work and because of the fracture sustained in his right leg, his occupation was very much affected. But, the learned counsel for the appellant has argued that the nature of injury and the disability given by the doctor has been taken for granting award by the Tribunal before assessing it in a very broad manner. On observing Ex.P4, the discharge summary, it reveals that the petitioner was in hospital as inpatient from 22.10.2005 to 05.11.2003 and Ex.P3 also reveals that he has sustained grievous fracture injuries and plastic surgery was also done to him. Hence, due to injuries in his foot, the petitioner is unable to walk in a regular manner as he was walking before the accident. Hence, the disability was assessed by PW2 at 55% by considering three fracture injuries in the right foot.

7. The Tribunal while determining loss of future earning capacity, has observed that the claimant who is a coolie worker can earn Rs.3000/- per month and if it is calculated for 15 years, he can earn more than Rs.5,00,000/-. Now, in view of the injuries sustained by him in his right leg, he could not earn as stated above and therefore restricted the amount calculated for 15 years to Rs.2,00,000/- and awarded the same under the head "Loss of earning capacity. This Court also confirms the same amount under the said head. Similarly, the sum awarded for pain and sufferings at Rs.50,000/- is also found very much reasonable. In view of the period of treatment taken at various hospitals as per the evidence of PW2 and the sum awarded for transportation and nourishment at Rs.5,000/- each are quite reasonable.

8. Since the surgery was done to the claimant, also he would have incurred medical expenses, therefore, this Court is inclined to award a sum of Rs.30,000/- for medical expenses. Considering the period of treatment, this Court finds it reasonable in granting Rs.15,000/- for attendant charges and also Rs.15,000/- for the loss of amenities, this Court modifies the award under the following heads:

Heads	Amount awarded by the Tribunal Rs.	Amount modified by this Court Rs.
For Loss of Income	2,00,000.00	2,00,000.00
For Pain and Suffering	50,000.00	50,000.00
For Transportation	5,000.00	5,000.00
For Nourishment	5,000.00	5,000.00
For Medical expenses	-	30,000.00
For Attender's charges	--	15,000.00
For Loss of Amenities	--	15,000.00
TOTAL	2,60,000.00	3,20,000.00

9. Though the Transport Corporation Company has filed the appeal to set aside the award passed by the Tribunal, the facts and circumstances of this case enables this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e) Rs.2,60,000/- is enhanced to Rs.3,20,000/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are beneficial in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme Court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

10. The respondent/claimant is directed to pay the additional court fee within a period of one week from the date of receipt of a copy of this order.

11. In the result, the Civil Miscellaneous Appeal is disposed of enhancing the compensation from Rs.2,60,000/- to Rs.3,20,000/- suo motu in the appeal filed by the Transport Corporation even in the absence of appeal/cross-appeal by the claimant. Consequently, the connected Miscellaneous Petition is closed. No costs.

12. Accordingly, the appellant Transport Corporation is directed to deposit the entire award amount, in respect of above Appeal as per the modified award passed by this Court, with interest and costs, before the Tribunal, 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 claimant's bank account through RTGS within one week thereon. The said amount shall carry the rate of interest at 7.5% per annum.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Sub Court, Thiruvallur.

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

+1cc to M/s.P.G.Padmanabhan, Advocate SR.73370

C.M.A. No.2032 of 2006
and
C.M.P.No.8722 of 2006

GP(CO)
CB(10/03/2020)

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