

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2018

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.2572 of 2005
and
CMP.No.13483 of 2005

The Managing Director,
Tamil Nadu State Express
Transport Corporation Ltd.,
Division - I, Chennai - 2.Appellant/Respondent

.Vs.

M.SelvamRespondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 25.07.2003 made in M.C.O.P.No.117 of 2001 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court - II), Salem.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mrs.Mythili Suresh
for Mr.T.L.Thirumalaisamy

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 25.07.2003 made in M.C.O.P.No.117 of 2001 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court - II), Salem.

2. The brief facts of the case are as follows :-

On 25.11.2000 at about 4.00 a.m., when the claimant was travelling in a bus belonging to the first respondent and when the said bus was proceeding from Attur to Salem, near Narasingapuram Bridge, because of rash and negligent driving of

the bus driver, he lost control and hit against the bridge, due to which the bus fell down in the river. In the said accident, many persons died and many persons got injuries and the claimant is one among injured person. Due to the said accident, the claimant sustained severe injuries and he also underwent treatment and sustained disability. Hence, the claimant has claimed a sum of Rs.5,00,000/- as compensation.

3. The appellant/Tamil Nadu State Express Transport Corporation Ltd., has not only denied the accident but also denied the factum of the claimant sustaining fracture and other injuries due to the accident. Further, the respondent also denied the treatment and the expenses incurred by the claimant and also his employment as wireman and his monthly income of Rs.7,000/-. On the whole, according to the appellant, the claim made by the claimant is excessive.

4. The Tribunal, after analyzing the evidence and documents placed before it, has awarded a sum of Rs.2,28,000/- under the following heads :-

Heads	Amount awarded by the Tribunal (Rs.)
Pain and Suffering and Transport expenses	25,000.00
Loss of income	14,000.00
Medical Expenses	55,000.00
Disability	1,34,000.00
Total compensation	2,28,000.00

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

5. In the grounds of appeal, it is stated that the accident had not occurred due to the rash and negligent driving on the part of the driver of the bus and that the sum awarded by the Tribunal at Rs.2,28,000/- for the fracture of two ribs is excessive. The claimant had suffered only one grievous injury and one simple injury as stated in Exs.A2 and A3. Hence, the sum awarded towards the disability, by taking into consideration the disability at 10% and determining the amount at Rs.1,34,000/- is excessive. The monthly income taken by the Tribunal is also not sustainable. Further grievances raised in the appeal are that the sum awarded under the heads pain and suffering, transport to hospital and loss of pay are also on the higher side.

6. Heard both sides and perused the materials available on record.

7. On the side of the appellant, it is argued that when the claimant was working as wireman and he sustained injuries and the disability has been assessed by the Doctor at 15%. From the Accident Report, it is observed that the claimant has sustained only one grievous injury and 2 simple injuries.

8. On the other hand, it is argued by the respondent that the injured sustained fracture in the ribs and he was under treatment from 25.11.2000 to 21.12.2000 for the continuous period. Further, it is argued that the claimant was earning Rs.7,780/- during the month of February. Hence, the Tribunal, taking into consideration the nature of injury and occupation of the claimant, had awarded the sum by adopting multiplier method. Whereas, it is argued by the appellant that when the disability is only 15% and there is also no loss of employment or income, the amount determined by the Tribunal by applying multiplier method is not proper.

9. It is vehemently argued by the respondent that against the claim of Rs.5,00,000/-, the Tribunal has awarded a sum of Rs.2,28,000/-, which is quite reasonable. When the claimant was in ICU for a long time and because of the fracture in the ribs, even as on date he is unable to do his regular work and his future prospects also very much affected and the age of the claimant is only 35 years. On the side of the respondent/claimant, the medical bills and wound certificate and bills for the treatment taken in the various hospitals were also produced.

10. Among other grounds, the main arguments advanced by the appellant is only with regard to the application of multiplier method and awarded huge sum for the disability at 15%. In view of the arguments and also considering the disability, the sum awarded by the Tribunal under the various heads has to be properly considered. In view of the nature of injury sustained by the claimant, he would have continue his occupation after completion of treatment. Hence, this Court instead of applying multiplier, inclined to fix a lumpsum for calculating loss of income. Accordingly, Rs.1,000/- is fixed per percentage and for the 15% disability, the loss of income is Rs.15,000/- ($1,000 \times 15$)

11. Accordingly, the amount awarded by the Tribunal under various heads are modified as follows :-

Heads	Amount awarded by the Tribunal (Rs.)	Modified amount awarded by this Court (Rs.)
Pain and Suffering and Transport expenses (20,000+10,000)	25,000.00	30,000.00
Loss of income	4,000.00	15,000.00
Medical Expenses	55,000.00	55,000.00
Disability	1,34,000.00	-
Attender Charge	-	15,000.00
Loss of amenities	-	20,000.00
Total compensation	2,28,000.00	1,35,000.00

12. Hence, the award of Rs.2,28,000/- granted by the Tribunal in MACTOP. No.117 of 2001 is reduced to Rs.1,35,000/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namely, 9% per annum and the apportionment shall be as ordered by the Tribunal.

13. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14. 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 same to the claimant's bank account through RTGS within one week thereon.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(Additional District Judge,
Fast Track Court - II), Salem.

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

+1cc to M/s.M.Krishnamoorthy, Advocate, SR.No. 71193

+1cc to M/s.T.L.Thirumalaisamy, Advocate, SR.No. 71756

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