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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.3331 of 2006

S.Moorthy

..Appellant/Petitioner

Versus

1. K.Kumar

2. The Managing Director,
Tamil Nadu State Transport
Corporation (Coimbatore Division I) Ltd.,
37, Mettupalayam Road,
Coimbatore-43.

(R1 driver of the bus. As no relief is
sought for against him, R1 is given up)

..Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and award of the learned Additional District Judge (Fast Track Court No.I) Erode in M.C.O.P.No.317 of 2005 dated 21.12.2005.

For Appellant : Mr.S.Kaithamalai Kumaran

For 1st Respondent : Given up

For 2nd Respondent : No Appearance

J U D G M E N T

The Criminal Miscellaneous Appeal has been preferred against the Judgment and Award of the learned Additional District Judge (Fast Track Court No.I) Erode in M.C.O.P.No.317 of 2005 dated 21.12.2005.

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

On 07.04.2003 at about 20.50 hours, when the petitioner was travelling in a Jeep bearing Registration No.TN 43 A 508, in a very slow manner from west to east direction, the TNSTC bus



bearing Registration No.TN 38 N 0626 (Coimbatore Division) was driven by its driver with a great speed ferociously downwards on the hill in an uncontrollable manner and dashed against the Jeep. Due to which, the petitioner sustained grievous injury and the inmates in the bus were also sustained injuries. A police complaint was also preferred against the driver of the Jeep on the file of the Kothagiri police station. Due to the said accident, the petitioner sustained severe injuries, which resulted in disability and thereby he incurred loss of income, pain and sufferings and medical expenses, for which, he claimed a sum of Rs.3,00,000/- as compensation.

3. In the counter statement, the respondents 1 and 2 have stated that the the mode of accident was not admitted and the petitioner has suppressed the true version of the accident. It is further stated that when the bus was coming near the Seemar Thottam at about 08.50 p.m, the Jeep which was driven by one Rangasamy in the opposite direction, came with only one headlight in a very rash and negligent manner and on seeing the said jeep, the driver of the said bus stopped the bus on the left side of the road and inspite of that, the driver of the Jeep came in the wrong side of the road and dashed against the jeep on the right side of the bus. Hence, the said accident had occurred only due to the rash and negligent driving of the driver of the Jeep and the case was also registered against the driver of the Jeep for having caused the said accident. The other aspects regarding the sum claimed by the petitioner under various heads are also stated as an excessive one and the claim application has to be dismissed.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given finding that the driver of the both vehicles are responsible for the said accident and fixed 75% liability on the driver of the Jeep and 25% on the driver of the bus. While determining the sum as compensation, the Tribunal also assessed the nature of injury sustained by the claimant, the medical expenses and the disability and awarded a sum of Rs.62,600/-, out of which, respondents 1 and 2 have to pay 25% as compensation. It is also observed that the Insurance Company of the Jeep was not added as party. The Tribunal has awarded a sum of Rs.62,600/- under various heads as follows:

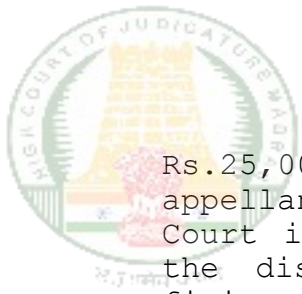
Heads	Sum awarded by the Tribunal (Rs.)
Disability	25,000.00
Pain and Sufferings	8,000.00
Transport Expenses	1,000.00
Extra Nourishment	3,000.00



the left side of the road, the driver of the bus who lost his control dashed against the Jeep and the Jeep also rolled down at a distance of 45 feet and the inmates also sustained injuries. Hence, the accident had occurred only due to the rash and negligent driving on the part of the driver of the bus. Before the Tribunal, the FIR, the accident register, rough plan and motor vehicle inspector report and judgment of the Criminal Court have been marked as Exhibits. It is the evidence of P.W.1 in the cross examination that he was travelling at the back side of the Jeep and he did not know anything about the accident and whose negligence, the accident had occurred. But it is the driver of the Jeep, who admitted the offence and also paid the fine before the Criminal Court for which Ex.P5 was filed before the Tribunal. The respondents on the other side had stated that it is the rash and negligent driving on the part of the Jeep who dashed against the bus, which was stopped at the left side of the road on seeing the Jeep, after dashed against the bus, the jeep rolled down, hence, it is clear that the accident had occurred only due to the rash and negligent driving of the Jeep driver. But, the Tribunal after analyzing the evidence and also the documents, has fixed the liability at 75% liability on the Jeep driver and 25% on the Transport Corporation Bus.

8. The Tribunal has also on considering the fact of either party throws the burden, on them and also based on the evidence and Ex.P1, FIR, charge sheet and the judgment of the Criminal Court, had fixed the liability on the Jeep driver/claimant at 75%. However, relying on the evidence that the bus driver was also partly liable for the said accident, fixed the liability at 25% is not a disputable one, as argued by the appellant. The appellant has argued that it is only the transport bus which is totally liable for the negligence and the entire liability has to be fixed on the driver of the bus. Further, it is observed that at the time of the accident, the Jeep was rolled down at a distance and hence, the appellant has sustained injuries and the case was also registered against him. Hence, the findings of the Tribunal, fixing the liability at 75% for the Jeep and 25% for the bus, is very much reasonable and it does not require any interference. It is argued that the petitioner sustained severe injuries including fracture, for which surgery was done to him and the Doctor who examined before the Tribunal, has issued the disability certificate-Ex.P7 by describing the disability at 25% which was not properly considered.

9. On perusal of the documents relating to the nature of injuries sustained by him, it is observed that the petitioner was treated as inpatient for one month and he has also sustained grievous injury of fracture in the right hand and other serious injuries all over the body. The disability has stated by the Doctor was taken at 25% as such and the sum has been awarded as



Rs.25,000/-. Hence, in view of the arguments advanced by the appellant and also the nature of injury sustained by him, this Court is of the view that the sum awarded by the Tribunal for the disability has to be properly considered and therefore fixing of Rs.1,500/- as disability would be proper one. Accordingly, the sum is calculated as Rs.1,500 X 25 = Rs.37,500/-. Similarly, the sum awarded towards pain and sufferings at Rs.8,000/- is enhanced by considering the fracture injury and head injury and it has to be considered at Rs.10,000/-. The sum awarded for the transportation charges is also increased from Rs.1,000 to Rs.2,000, likewise for nourishment the same is enhanced from Rs.3,000 to Rs.5,000. The sum awarded for taking treatment for 25 days has been properly considered by taking his monthly income at Rs.1,800/-, the same does not require any modification. Further, the sum awarded for future loss of earning power at Rs.24,000/- is also a reasonable one. Considering the nature of injury and the disability, this Court grant a sum of Rs.5,000/- towards medical expenses and Rs.2,400/- towards attendant charges.

In view of the above, the award of the Tribunal is modified as follows:

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Disability	25,000.00	37,500.00
Pain and Suffering	8,000.00	10,000.00
Transport Expenses	1,000.00	2,000.00
Nourishment	3,000.00	5,000.00
Loss of income	1,500.00	1,500.00
Future earning power	24,000.00	24,000.00
Medical Bills	100.00	-
Medical Expenses	-	5,000.00
Attendant Charges	-	2,400.00
Total compensation	62600.00	87,400.00

10. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal. The liability fixed by the Tribunal on both the parties are remain same. No costs.

11. Accordingly, the 2nd respondent 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 interest for the enhancement amount shall carry the same as awarded by the Tribunal.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gbi/uma

To

1. The Additional District Judge
(Fast Track Court No.I),
Erode.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.75815

C.M.A. No.3331 of 2006

SSI(CO)
SSM(03/10/2019).