

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.4176 of 2005

M.Raja, S/o.P.R.Munusamy,
Police Constable Grade-1,
177, Alangayam cross Road,
Perumalpettai, Vaniyampadi,
Vellore.

...Appellant/Petitioner

Vs

The Managing Director,
Tamilnadu State Transport,
Corport Ltd., Vellore.

...Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 18.02.2005 made in M.C.O.P.No.291 of 2000 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Thirupattur, Vellore District.

For Appellant : Mr.F.Teny Chella Raja
for M/s.M.Mala

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 18.02.2005 made in M.C.O.P.No.291 of 2000 on the file of the Motor Accident Claims Tribunal, the Subordinate Court, Thirupattur, Vellore District.

2. The brief facts leading to the claim petition are as follows :-

On 09.03.2000 at about 9.45 p.m., the claimant along with the Jail Warden, police constables and prisoners was travelling from Madras to Vellore in a bus owned by the respondent bearing Registration No. TN-23-N-1195. Due to rash and negligent driving by the driver of the bus, it dashed against the another bus bearing Registration No.

TN-23-W-1206 proceeding on the same direction. Due to which, the claimant sustained injuries all over his body. He was given treatment in the Government Hospital, Vellore. The claimant has claimed a sum of Rs.5,00,000/- as compensation before the Tribunal for the injuries sustained by him.

3. The respondent/Transport Corporation, in the counter statement, has stated that the said accident had occurred in spite of the efforts taken by both the drivers and it is only an accident that occurred due to unavoidable circumstances. The other ground raised by the respondent is that no proof has been placed before the Tribunal to show that the petitioner was travelling in the said bus bearing Registration No.TN-23-N-1195, on the date of accident.

4. The Tribunal, after analyzing the evidence and documents, has given a finding that the accident occurred only due to the rash and negligent driving of the driver of the bus in which the claimant was travelling and hence the respondent/Transport Corporation is liable to pay the compensation. The injuries sustained by the claimant, the tribunal has awarded a sum of Rs.26,000/- as compensation for the injury, loss of income and other expenses incurred by the claimant. The sum awarded by the Tribunal under the following heads is as follows :

Heads	Sum awarded by the Tribunal (Rs.)
Loss of income	5,000.00
Transport Expenses	1,000.00
Medical Expenses	5,000.00
Pain and Suffering	10,000.00
Disability	5,000.00
Total compensation	26,000.00

Aggrieved against the said award, the claimant has preferred this appeal.

5. In the grounds of appeal, it is stated that the doctor who was examined as P.W.2, has assessed disability of the claimant at 35% and the same was not properly considered by the Tribunal, in spite of the document Ex.P.4, the disability certificate filed by the claimant. The Wound Certificate very well reveals the nature of injury sustained by the claimant. The Tribunal, without considering the treatment taken for the injury and for disability sustained by the claimant who had lost his teeth and finds it very difficult to speak audibly and the other aspects, has awarded the said compensation. According to the appellant, when there is a document showing 35% disability, the sum awarded by the Tribunal at Rs.5,000/- is not justified.

The other sum awarded by the Tribunal for lose of teeth, which is grievous injury and the total sum awarded by the tribunal are not at all reasonable. The nature of the occupation of the claimant was also not considered by the Tribunal.

6. The appellant/claimant has further argued that at the time of the accident the claimant was earning Rs.6,000/- per month and the said income by the claimant was not disputed by the respondent. Ex.P3-Accident Register reveals the fact that the claimant has suffered grievous injury and he was also treated in Vellore Government Hospital. It is also stated that the claimant was aged about 35 years, at the time of accident and he was working in the Tamil Nadu Armed Reserve Police and earning Rs.6,000/- per month. The Tribunal has also observed that he was not attending duty for nearly 25 days during the treatment period and the tribunal has calculated the loss of income at Rs.5,000/-.

7. The main argument advanced by the claimant is that since the claimant has lost his teeth which aspect was very much assessed by the Doctor and fixed 35% disability as per Ex.P4 filed before the Tribunal, the sum awarded by the Tribunal for disability at Rs.5,000/- is without any basis and not reasonable, according to the law in force. Therefore, the sum awarded at Rs.5,000/- for the 35% disability has to be properly considered.

8. On the other hand, the respondent has argued that the sum awarded by the Tribunal is quite reasonable and there is no proper evidence and considering the 35% disability.

9. In view of the argument advanced by both parties and on perusal of the evidence and records, this Court is of the view that taking the disability at 15% and fixing Rs.2,000/- per percentage would be reasonable and accordingly Rs.30,000/- (Rs.2,000 * 15) is calculated for the disability. With regard to the sum awarded under the head pain and suffering, medical expenses and grievous injuries are found very much reasonable and proper and hence does not require any modification.

10. Accordingly, the sum awarded by the Tribunal is enhanced as follows :

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Loss of income	5,000.00	5,000.00
Transport Expenses	1,000.00	1,000.00
Medical Expenses	5,000.00	5,000.00

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Pain and Suffering	10,000.00	10,000.00
Disability	5,000.00	30,000.00
Total compensation	26,000.00	51,000.00

11. In view of the above said enhancement, this Civil Miscellaneous Appeal is partly allowed. No costs. The Appellant is directed to pay additional Court fee for the enhanced amount.

12. The respondent/Transport Corporation is directed to deposit the enhanced award amount, in respect of above Appeal as per the modified award passed by this Court, with interest @ 9% per annum 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.

ttr/lpp

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
(Subordinate Court), Thirupattur, Vellore District.

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

+1cc to Mr.K.J.Sivakumar, Advocate, SR.No.74026

+1cc to M/s.M.Malar, Advocate, SR.No.74492

CMA.No.4176 of 2005

Kak(30/05/2019)