

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.577 of 2005

Arokkiyadoss

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Appellant/Petitioner

Versus

The Managing Director,
Pallavan Transport Corporation Ltd.,
Mount Road, Madras - 2.

Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Award and Decree dated 12.07.1994 made in M.A.C.T.O.P.No.1986 of 1991 on the file of the Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Madras.

For Appellant : M/s.Ramya

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Award and Decree dated 12.07.1994 made in M.A.C.T.O.P.No.1986 of 1991 on the file of the Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Madras.

2. The facts of the case is as follows:-

On 14.08.1991 at about 7.00 p.m., the claimant/appellant was travelling as a passenger in a bus owned by the respondent/Transport Corporation, bearing Registration No.TN-01-N-1179, when the bus was proceeding in the Ashok Nagar 1st Avenue, the driver of the bus was driven in a rash and negligent manner by over taking the lorry and grazed the same. Due to the said accident, the claimant sustained injuries.

3. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident occurred only due to the negligent driving on the part of the driver of the bus. Hence, the Tribunal has fixed the liability on the Transport Corporation, to pay the compensation. The appellant/claimant has claimed a sum of Rs.40,000/- as compensation. Against the claim made by the claimant, the Tribunal has awarded a sum of Rs.18,000/-. Aggrieved against

the said award, the claimant has preferred this appeal.

4. Heard the learned counsel for the appellant and perused the materials available on record.

5. In the grounds of appeal, the appellant has stated that the Tribunal has not considered the nature of injuries sustained by the claimant, which resulted in 25% of disability. When the claim is only for Rs.40,000/- the Tribunal ought to have awarded the same. The other points argued by the appellant is that the disability sustained by the claimant was 25%. The Tribunal has awarded only a sum of Rs.18,000/- without any basis. The sum awarded by the Tribunal towards for pain and suffering at Rs.2,000/- is a very meagre and Rs.3,000/- towards for the loss of earning power is also on the lower side.

6. On a perusal of the records, Ex.P1-Discharge Summary, it is observed that there is a fracture in his right leg and he has to undergo femur bone. It is seen from the records that he was also under treatment from 14.08.1991 to 26.08.1991, hence, it is clear that the claimant was under treatment in Royapettah Hospital for 13 days. It is the further evidence of the claimant that because of the said fracture injury, in spite of treatment, his movement of the right leg upto the ankle is restricted. The disability certificate filed by P.W.2 shows that the claimant had sustained 25% disability. The claimant, in the claim application, has stated that he was working as LIC agent and earning Rs.750/- per month. But there is no income proof or document relating to his job was produced before the Tribunal. However, by taking into consideration the nature of injury found as per Ex.P1 and also the disability at 25%, the sum awarded by the Tribunal under the head disability at Rs.15,000/- is very meager.

7. Based on the evidence and documents, Exs.P1 and P2 and the occupation of the claimant, the sum awarded by the Tribunal under the head disability has to be properly considered and sum enhancement would be proper. Regarding the nature of injury sustained by the claimant, the sum awarded under the head pain and suffering also appears on the lower side and hence the reasonable amount has to be awarded. Further by considering the argument made by the learned counsel for the appellant that the claimant was working as LIC agent and because of the said accident, he is unable to proceed with his profession and hence the sum awarded under the head loss of earning power at Rs.3,000/- is also very meager and this amount has also to be properly compensated.

8. In view of the above, the amount awarded by the Tribunal under various heads are modified as follows :

Heads	Amount awarded by the Tribunal (Rs.)	Amount enhanced by this Court (Rs.)
For Disability	15,000.00	20,000.00

Heads	Amount awarded by the Tribunal (Rs.)	Amount enhanced by this Court (Rs.)
For pain and suffering	2,000.00	5,000.00
For loss of earning power	3,000.00	5,000.00
For Transport expenses	-	500.00
Total compensation	18,000.00	30,500.00

Hence, the award of Rs.18,000/-/- granted by the Tribunal in MACTOP. No.1986 of 1991 is enhanced to Rs.30,500/-. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

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

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The VI Judge,
The Motor Accident Claims Tribunal
(Court of Small Causes), Madras.

2. The Section Officer,
V.R.Section,
High Court, Madras. (2 Copies)

+2cc to Mr.J.Mahalingam, Advocate, S.R.No. 67516

CMA.No.577 of 2005

BR(CO)
GN(23/05/2019)