

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.09.2018

Delivered on : 14.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1385 of 2015

R.Karunakaran

.. Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Chennai - 600 002.

... Respondent

Prayer:- Civil Miscellaneous Appeal filed against the Judgement and Decree dated 10.04.2015 made in M.C.O.P.No.3218 of 2013 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondent : Mr.S.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal is filed against judgement and decree dated 10.04.2015 made in M.C.O.P.No.3218 of 2013 on the file of learned Motor Accident Claims Tribunal, III Judge, Court of Small Causes Chennai.

2.The brief facts of the case are that on 15.11.2012 at about 08:30 hours when the appellant was travelling as a passenger in a MTC bus bearing Registration No.TN-01-N-4258 of Route No.159E proceeding towards the direction of South, the bus driver drove the bus in rash and negligent manner that the said bus went off to the wrong side of the road and dashed against on coming another MTC bus bearing Registration No.TN-01-N-0164 which was travelling in the opposite direction. Due to the accident, appellant sustained an injury to the face on his zygomatic bone and loss of teeth on his upper and lower jaw and sustained multiple injuries all over his body. The accident was caused due to the rash and negligent driving of the bus driver of the appellant travelling in. The respondent / Transport Corporation is liable to pay compensation to the appellant. The

appellant filed petition claiming a compensation of Rs.6,00,000/- for the injuries sustained in the accident.

3.The sole respondent Transport Corporation appeared before the Motor Accident Claims Tribunal (herein after called the Tribunal) through its counsel and filed a counter denying all the allegation made in the claim petition. In the said counter the appellant was put to strict proof of each and every one of the same and sought for dismissal of this appeal.

4.The appellant was examined himself as PW1 and the doctor named Mathiazhagan was examined as PW2. On the side of the appellant, produced documents were marked as Exhibits-P1 to P6 to prove the claim. On the side of the respondent, the Driver was examined as RW1 but no documents were filed or marked.

5.On perusal of the materials adduced by the parties, the Tribunal is of the opinion that the driver of the Respondent corporation is responsible for the accident and held that the respondent corporation is the owner of the vehicle, hence it is liable to pay the compensation to the appellant. The Tribunal had fixed the award for a sum of Rs.40,000/- as compensation to the appellant. Aggrieved by this order, this appellant have prepared this appeal for seeking an enhancement against the awarded amount.

6.I heard Mr.A.A.Venkatesan, learned counsel for the appellant and Mr.S.Sivakumar, learned counsel for the respondent and perused the materials available on record.

7.The learned counsel for the appellant contended that the Tribunal failed to consider all the documentary evidences and materials filed by the appellant/injured before it. The counsel contended that the Tribunal had abruptly passed an order of a meager compensation award of Rs.40,000/- failing to consider the break ups, though the appellant suffered from a 25% of disability as certified by the doctor in exhibit P5, and also the Exhibit P6 shows the present disfigurement of the face of the appellant, despite this, the Tribunal passed a meager award without any application of mind.

8.The learned counsel for the Respondent Corporation strongly contended that the Tribunal has considered all the materials evidences and documents filed before it and has passed a reasonable compensation and there is no need for this court's intervention. Hence the counsel for the sole Respondent stated that this appeal requires to be dismissed in limine.

9.The only point for consideration in this appeal :

(1) Whether the appellant is entitled for enhancement of compensation?

10.At first instance, considering the submissions of both sides, this court of the opinion that the Respondent corporation had not disputed the facts of the accident and only questioned the quantum of the order.

11.On a careful perusal of the records, this court finds that the age of the appellant was 42 at the time of the accident having sustained a grievous injuries to the face and loss of teeth, the appellant is a carpenter by profession wherein he is earning Rs.8,000/-per month. This court finds from the exhibit P4 (discharge summary) that injuries sustained by the appellant were in grievous in nature as the appellant was treated as In-Patient from 15.11.2012 to 16.11.2012, the appellant taken treatments. Then the appellant was assessed to be at 25% disability by the doctor. The Tribunal finds that disability set by the doctor (PW2) is on the highly exaggerated as the injuries sustained were only a soft tissue injury partially avulsed without any neuro surgical intervention and there is no fracture and merely a loss of two teeth (11 & 21) would not attract the disability assessed by the ortho doctor, hence it did not consider the disability. On perusal of the evidence of the appellant that he has done an artificial denture for his missing teeth, which requires a change for every three years till his life time. The Tribunal failed to look to at the complications of an artificial denture. Rather the tribunal has passed an meager order of compensation of Rs.40,000/- without giving any cogent and acceptable reasons does not justifies the Tribunal's action. Therefore this court, sets the appellant's disability at 20% as it is necessary to consider the appellants continuing or permanent disability heads.

12.Considering the above discussions and argument of the counsels this court finds that the Tribunal failing to consider the disability is not reasonable. On the basis of the evidences and injuries sustained by the appellant which are grievous in nature this court is in view to take the disability suffered by the appellant at 20% and awards the appellant with a compensation of Rs.3000/- per percentage of the disability. Hence the award under the disability head the appellant is entitled to Rs.60,000/-. Since the appellant is carpenter by profession, as per ruling of Supreme court in SYED SADIQ CASE in the apex court had fixed a notional income of vegetable vendors, is at Rs.6500/- per month without any documents to prove his income. From the records adduced by the parties the appellant would have been idled for two months, hence under head of loss of income the appellant is entitled to Rs.13,000/-. The

appellant is also entitled to Rs.10,000/- towards pain and sufferings as the injuries were grievous and undergone surgeries in nature. Further the appellant is entitled to Rs.5000/- for loss of amenities, Rs.5000/- towards attender charges, Rs.2500/- for transport to hospital charges, Rs.2500/- for extra nourishment and Rs.1000/- for damages of clothes. The appellant has taken treatment in the Stanely Government Hospital and did not produce bills for the medical expenses, therefore this court does award any amount towards medical expenses.

13.In the alight of above discussion the award of the Tribunal is modified and enhanced on the above terms. The award granted by the Tribunal is enhanced from Rs.40,000/- to Rs.99,000/- as the award of compensation of motor vehicle accidents requires to consider the necessary break ups to pass an order, the Tribunal utterly failed to do so.

14.In the result, the Civil Miscellaneous Appeal is partly allowed and enhanced the award of the Tribunal from Rs.40,000/- to Rs.99,000/-. The respondent Transport Corporation is directed to deposit the enhanced award amount with interest at the rate of 7.5% p.a. and cost from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. After such deposit, the appellant is permitted to withdraw the award amount with accrued interest from the Court by filing necessary applications. No cost.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

vs

To

1.The Motor Accident Claims Tribunal
III Court of Small Causes,
Chennai.

2.The Section Officer,
V.R.Section, High Court,
Madras-104.

+1 CC to Mr.S.Sivakumar, Advocate sr 77538.

+1 CC to Mr.A.A.Venkatesan, Advocate sr 77563.

C.M.A.No.1385 of 2015

RSV(CO)

SP(12/12/2018)