

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29.08.2018

JUDGMENT PRONOUNCED ON : 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
Civil Miscellaneous Appeal No.1780 of 2011

N. Jayakumar
No.9, Kalidasan Street
M.K.B. Nagar
Ambattur, Chennai - 600053 Appellant/Cliamant

Vs

Metropolitan Transport Corporation (Chennai) Ltd
Rep by its
The Managing Director
Pallavan Salai, Chennai - 600002 Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 25.08.2010 made in MCOP No.654 of 2006 on the file of Motor Accidents Claims Tribunal in the VI Court of Small Causes, Chennai

For Appellant : Mr.M. Swamikannan
For Respondents : Mr. Vasanthakumar

J U D G M E N T

Aggrieved over the award passed by the Motor Accident Claim Tribunal/ Court of Small Causes, Chennai in MCOP No.654 of 2006, the appellant herein who is the petitioner in the claim petition filed this appeal, in which he is seeking relief to enhance the award amount arrived at by the Claim Tribunal. In the Claim Tribunal, the appellant had filed a claim petition under Section 166 of Motor Vehicles Act, in which he claimed a compensation of Rs.6,00,000/-. The sole respondent herein is the owner of the bus bearing Reg.No.TN 02 N0276, which is responsible for the accident. After the elaborate enquiry, the claim Tribunal awarded compensation of Rs.1,00,065/- with interest at the rate of 7.5% per annum, against which the present appeal has been preferred.

2) In the claim Tribunal, the case of the petitioner is as follows.

2.1. On 01.01.2006, at about 5.30 hours, the petitioner riding the Motor cycle bearing Reg.No.TN 05 L 9482 from west to east direction in MTH Road, on the extreme northern side, when he was near to the junction of Mettu Street, Villivakkam, the MTC bus bearing Reg.No. TN 02 N 0276 owned by the respondent came in the wrong side, in a rash and negligent manner and dashed against the petitioner. Due to which the petitioner sustained multiple fractures and injuries. According to him, the driver of the MTC bus alone is solely and directly responsible for the accident.

2.2. On the other hand, opposing the claim of the petitioner by filing counter, the respondent denied the accident itself and stated that only due to the rash and negligent driving of the injured the accident occurred. Further, it was contended that at the time of accident, the injured drove the Motor cycle bearing Reg.No.8482, in a rash and negligent manner, crossing the centre of the road and crossed the front side of the bus, which was parked for turning to its right side. According to him, the rash and negligent act of the Claimant, the accident is occurred. The age, avocation and income of the petitioner are also denied. The claim of the petitioner is exorbitant and this respondent sought for the dismissal of the claim petition.

3) Before the Tribunal, the petitioner himself examined as PW 1 and he produced 10 documents as Ex.P.1 to Ex.P.10. Further, on the side of the petitioner, one Dr. Amarnath R. Sowlee, who issued Disability Certificate to the petitioner was examined as PW 2. On the side of the respondent, the driver of the offending vehicle was examined as RW 1.

4) The Tribunal on the basis of the available records found that the driver of the respondent alone caused the accident and passed an award for a sum of Rs.1,00,065/- as compensation to the injured claimant Jayakumar. Further directed the respondent to pay the compensation. Aggrieved over the said finding, the claimant has come forward with this present appeal.

5) The learned counsel appearing for the appellant would contend that the Tribunal failed to appreciate the evidence given by PW 2 in respect to the percentage of the disability sustained by the claimant. Further, he would contend that the award passed by the claim Tribunal under various heads are very meager. Thereby, he prayed for enhancing the award amount.

6) Per contra, the learned counsel appearing for the respondent would contend that the claim Tribunal properly appreciated the evidence given by the petitioner and on appraising the relevant documents passed an award, which does not need any interference.

7) On considering both side arguments, admittedly at the time of accident, the petitioner was driving the Motor cycle bearing Reg.No.TN 05 L 9482. According to the petitioner, near Villivakkam, Kalpana Hotel, MTH bus owned by the respondent came in a wrong side and dashed against the petitioner. The police registered the case against the driver of the bus. Ex.P.1 is the copy of the First Information Report. Thus the oral evidence of PW 1 and the contents of Ex.P.1 clearly established that only due to the negligence of the bus driver, the accident is occurred. In order to dispute the evidence of PW 1, the driver of MTC bus was examined as RW 1. Even though, the evidence given by RW1 is against the evidence of PW 1 the said evidence is not supported through any relevant documents. So, without any corroborating evidence, believing the oral evidence of RW 1 alone is not sufficient to accept the case of the respondent. Accordingly, the findings arrived by the Tribunal with regard to the negligence of the bus driver does not need any interference and I am of the opinion that the accident had happened only due to the rash and negligent act of the bus driver.

8) With regard to the quantum of compensation fixed by the Claim Tribunal, at the time of accident, the petitioner is aged about 28 years and he is running a business in the name & style of M/s. J.K. Cell World & Xerox in No.125A, 1st Main Road, Teachers Colony, Ambattur, Chennai. PW 1 further stated that he was earning Rs.7,500/- to Rs.9,000/- per month. In the said circumstances, in support of the said evidence, the copy of the Certificate issued by the Small Scale Industries and the copy of the Bank Statement stands in the name of petitioner is exhibited as Ex.P.7 and Ex.P.8 respectively. Those documents prove the evidence of petitioner in respect to his business. Further, on go through the copy of the Accident Register Ex.P.2, the petitioner has suffered the injuries in head, cheek, right hand wrist. According to the Doctor, the petitioner sustained 25% of the permanent partial disability. The Doctor who issued the Disability Certificate has been examined as PW 2 and after go through the Ex.P.10 Xray, Ex.P.3 Scan Report, he fixed the Disability suffered by the petitioner as 25%. The Doctor further deposed that as of now the petitioner find difficult to walk, sit and doing his work as before the

date of accident as such it is apparent that the petitioner suffered grievous injuries and fracture, which causing the functional disability. Since the petitioner is running a firm, he will find it difficult to attend his normal work and therefore the Tribunal is accepting the evidence of PW 2 and fixed the disability suffered by the petitioner as 25%. However, the compensation fixed at the rate of Rs.2000/- per percentage of disability is not proper. Taking into consideration of the nature of the injury, it will be appropriate to fix Rs.3000/- per percentage of disability. Accordingly, the compensation for the disability is fixed as

$$25\% \times \text{Rs.}3000 = \text{Rs.}75,000/-$$

9) The Tribunal has awarded Rs.4,500/- for the loss of income per month and totally Rs.9,000/- is awarded under the head of loss of income. Now according to the evidence given by the petitioner, he is not attended his regular work for a period of 4 months. Therefore, the same amount was extended for a period of 4 months as Rs.18000/-. Under the head of Transportation to Hospital the Tribunal awarded Rs.3,000/- . Now, considering to the period of treatment and the nature of injury sustained by the petitioner, Rs.5,000/- is an appropriate amount under the head of transportation. In the same way, an amount of Rs.5000/- awarded under the head of extra nourishment was enhanced to Rs.15,000/-. In the Claim Tribunal, an amount of Rs.20,000/- was awarded under the head of pain and suffering. The said amount is unaltered and the other heads are modified as follows. Considering the nature of injuries sustained, it will be appropriate to award Rs.5000/- under the head of attender charges and the petitioner is entitled to Rs. 15,000/- under the head of loss of amenities. In respect to the medical expenses, the claimant produced medical bills for Rs. 17,061/- and the Claim Tribunal after verifying the correctness of the the said Bills awarded Rs.17,061/- under the head of medical expenses, which does not need any interference. Further in the claim Tribunal, Rs.1000/- was awarded under the head of damage to clothes. Now, it will be appropriate to fix Rs.5,000/- under the head of damage to clothes.

10) Accordingly, the modified compensation payable to the injured Jayakumar is as under:

SL.NO	PARTICULARS	AMOUNT (IN.RS)
1.	Towards Loss of income for 4 months at the rate of Rs.4500/- per month	18,000.00
2.	Towards Transportation charges	5,000.00
3.	Towards Extra nourishment	15,000.00
4.	Towards Damage to clothes	5,000.00
5.	Towards Medical Expenses	17,061.00
6.	Towards Pain and suffering	20,000.00
7.	Towards Attendant Charges	5,000.00
8.	Towards Disability of 25% at the rate of Rs.3,000/- per percentage	75,000.00
9.	Towards Loss of amenities	15,000.00
	Total	1,75,061.00
	Total (Rounded off to)	1,75,100.00

11) In the result, the Civil Miscellaneous appeal is partly allowed. The award amount is enhanced to Rs.1,75,100/-. The appellant is entitled to the compensation of Rs.1,75,100/- with 7.5% interest per annum from the date of petition till the date of realisation. The respondent is directed to deposit the award amount along with the accrued interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the appellant in this CMA is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

vrn

Sd/--

//True Copy// Assistant Registrar (CS iv)

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal ,
VI Court of Small causes, Chennai.

Copy to

The section officer,

VR Section, High court, Madras

+2cc to Mr.M. Swamikannan , Advocate SR.No. 59674, 63052

Civil Miscellaneous Appeal No.1780 of 2011

ASK(13/11/2018)