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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.968 of 2015 and 2650 of 2018
and C.M.P.No.19992 of 2018

G.Parthiban

.. Appellant in C.M.A.No.968 of 2015

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

.. Appellant in C.M.A.No.2650 of 2018

Vs.

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

.. Respondent in C.M.A.No.968 of 2015

G.Parthiban

.. Respondent in C.M.A.No.2650 of 2018

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 23.09.2014 made in M.C.O.P.No.5959 of 2012 on the file of the III Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

(In C.M.A.No.968 of 2015)

For Appellant : Mr.A.A.Venkatesan

For Respondent : Mr.Natarajan

(In C.M.A.No.2650 of 2018)

For Appellant : Mr.Natarajan

For Respondent : Mr.A.A.Venkatesan

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award and decree dated 23.09.2014 made in M.C.O.P.No.5959 of



2012 on the file of the III Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

2.Both the appeals are arising out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petition.

3.The claimant filed M.C.O.P.No.5959 of 2012 on the file of the III Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.08.2012.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place only due to the rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and directed the respondent to pay a sum of Rs.2,27,000/- as compensation to the claimant.

5.Not being satisfied with the compensation awarded by the Tribunal, the claimant has come out with C.M.A.No.968 of 2015.

6.Challenging the award of the Tribunal fixing the liability as well as the quantum of compensation, the respondent-Transport Corporation has come out with C.M.A.No.2650 of 2018.

7.The learned counsel appearing for the claimant contended that the Tribunal erred in reducing the percentage of disability to 65% from 70% without assigning any reason. The Tribunal ought to have granted compensation at the rate of Rs.3,000/- per percentage, instead of Rs.1,800/- per percentage. The Tribunal ought to have awarded more amounts for loss of income and the amounts awarded under different heads are meager and prayed for enhancement of compensation.

8.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal failed to consider that the accident occurred only due to negligence on the part of the claimant, that as he tried to get down from the moving bus, lost grip and fell down and got injured. He further contended that the Tribunal erroneously did not accept the evidence of R.W.1-driver of the bus and the percentage of disability fixed by the Tribunal is excessive and the amounts awarded under different heads are also excessive.



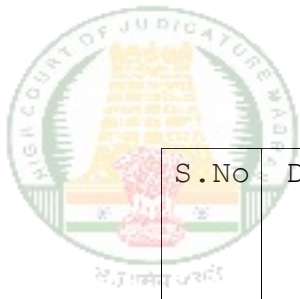
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9. Heard the learned counsel appearing for the claimant as well as the respondent-Transport Corporation and perused the materials available on record.

10. From the materials on record, it is seen that the claimant fell down from the bus and sustained injuries. According to the claimant, the driver of the bus without giving any signal, suddenly started the bus at high speed and he fell down from the bus and got injured. On the other hand, the driver of the bus-R.W.1 has stated that the claimant was under the influence of alcohol, hanging in the bus and while trying to get down from the moving bus, lost grip and fell down and sustained injuries. The Tribunal considering the evidence of claimant as P.W.1 and driver of the bus as R.W.1, accepted the evidence of P.W.1 on the ground that the driver of the bus must be careful in driving the bus in a busy road. There is no error in such finding of the Tribunal that the driver of the bus belonging to the respondent-Transport Corporation is responsible for the accident.

11. As far as quantum of compensation is concerned, the Doctor has certified that the claimant suffered 70% of disability. The Tribunal considering the evidence on record, reduced the same to 65%, by giving reason and the same is correct. The Tribunal has granted a sum of Rs.1,800/- per percentage of disability. The said amount is very meager. The claimant is entitled to a sum of Rs.2,000/- per percentage, for 65%, i.e., $\text{Rs.2,000} \times 65 = \text{Rs.1,30,000/-}$. The Tribunal holding that the claimant would have incurred some expenses in the hospital while he was taking treatment as in-patient, awarded a sum of Rs.5,000/- for incidental medical expenses. While calculating the compensation, the Tribunal calculated Rs.10,000/- towards medical expenses, despite awarding Rs.5,000/- in the body of the award. Hence, the said amount is reduced to Rs.5,000/-, as awarded by the Tribunal in the body of the award. The Tribunal has awarded a sum of Rs.10,000/- towards transport expenses and no evidence has been produced to show that the claimant has spent the said amount. Hence, the same is reduced to Rs.5,000/-. The amounts granted under other heads are concerned, the Tribunal has considered all the materials on record in proper perspective and granted compensation and the same are just and reasonable. Hence, they are hereby confirmed.

12. Thus, the compensation awarded by the Tribunal is modified as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,17,000/-	1,30,000/-	enhanced
2.	Pain and suffering	40,000/-	40,000/-	confirmed
3.	Transport to Hospital	10,000/-	5,000/-	reduced
4.	Loss of earnings	25,000/-	25,000/-	confirmed
5.	Extra nourishment	10,000/-	10,000/-	confirmed
6.	Attender charges	5,000/-	5,000/-	confirmed
7.	Loss of amenities	10,000/-	10,000/-	confirmed
8.	Medical expenses	10,000/-	5,000/-	reduced
	Total	2,27,000/-	2,30,000/-	Enhanced by Rs.3,000/-

13. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.2,30,000/- with proportionate interest and costs. The respondent-Transport Corporation is directed to deposit the enhanced award amount, with interest, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount with accrued interest, No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk/gsa



To

1.The III Judge,
Court of Small Causes,
(Motor Accidents Claims Tribunal), Chennai.

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

+lcc to Mr.Natarajan, Advocate sr.no.80735

+lcc to Mr.A.A.Venkatesan, Advocate sr.no.79296

C.M.A.Nos.968 of 2015 and 2650 of 2018
and C.M.P.No.19992 of 2018

cnr(co)
nr 07/02/2019