

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2422 of 2015
and
C.M.P.No.686 of 2018

G.Ramesh

..Appellant/Petitioner

..vs..

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

..Respondent/Respondent

Prayer:-Civil Miscellaneous Appeal filed against the judgment and decree dated 6.02.2015 made in M.C.O.P.No.11 of 2013 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For appellant : : Mr.K.Varadhakamaraj

For Respondent : :Mr.K.S.Suresh

J U D G M E N T

The appellant/claimant has filed this appeal against the judgment and decree dated 06.02.2015 made in M.C.O.P.No.11 of 2013 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. On 30.07.2012 at about 12.00 hours, while the petitioner was riding a Motor Cycle bearing Reg.No.TN-10-AH-0823, in front of Nandanam Pay and Accounts Office out gate in Anna Salai, Chennai, the respondent-Corporation bus bearing Reg.No.TN-01-N-7722 came at high speed driven in a rash and negligent manner by its driver, hit the petitioner's motor cycle, thereby, the petitioner sustained grievous injuries. He suffered fracture in both the legs and also head injury. He was treated as inpatient from 30.07.2012 to 22.08.2012 and suffered permanent disability of 45%. The Petitioner claims that he continues to take treatment for the injuries suffered by him. The petitioner further states that he was doing travel business and was earning Rs.10,000/- per month at the time of accident and due to injury suffered by him, he is

unable to carry on the business. As such the petitioner seeks compensation of Rs.7,00,000/- from the respondent-Transport Corporation, as the negligence of the bus driver was responsible for the accident. Hence, the petition.

3. On the other hand, opposing the claim of the petitioner by filing counter, the respondent-Transport Corporation contends that on 30.07.2012, the bus was on its schedule trip proceeding from Guduvanchery to High Court along Anna Salai and when the bus reached Nandhanam bus stop at about 11.50 hours, the driver saw motor-cycle coming in front of the bus and immediately driver stopped the bus. However, the driver of the motor cycle unable to control the speed, lost balance dashed against the right side body of the bus fell down and sustained injuries. According to the respondent, only due to negligence of the rider of motor cycle, the accident occurred and the bus driver was not responsible for the accident. The claim of the petitioner about his avocation, income and nature of injuries is disputed by the respondent. It is further contended that the driver of the motor cycle is guilty of contributory negligence and the sum claimed by the petitioner is too excessive. Hence, the respondent sought for dismissal of the petition.

4. Before the tribunal, the petitioner examined himself as P.W.1 and two other witnesses P.W.2 and P.W.3. The petitioner also produced documents P1 to P9. On the side of the respondent, RW1 was examined but no document was produced.

5. After considering the materials available on record the Tribunal found that the driver of the respondent-Corporation bus caused the accident and also held that the respondent is liable to pay compensation as the owner of the bus. On the basis of available evidence, the tribunal awarded a sum of Rs.2,18,201/- as compensation for the petitioner.

The Tribunal also granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No	Head	Amount granted by the Tribunal
1	Loss of earnings	Rs. 20,000/-
2	Transport to Hospital	Rs. 7,000/-
3	Extra nourishment	Rs. 12,000/-
4	Damage to clothing	Rs. 500/-
5	Medical expenses	Rs. 1,18,701/-
6	Pain and suffering	Rs. 30,000/-

Sl.No	Head	Amount granted by the Tribunal
7	Disability at 15% at Rs.2000/- per percentage	Rs. 30,000/-
	Total	Rs. 2,18,201/-

6. Not satisfied with the quantum fixed by the Tribunal, the petitioner/claimant has come forward with the appeal seeking enhancement of the amount of compensation awarded by the tribunal.

7. The learned counsel for the petitioner contends that the tribunal erred in realizing the disability suffered by the petitioner assessed at 45% to 50;; the tribunal failed to award any amount towards 'loss of earning' power and also the amount awarded by the tribunal under various heads is very nominal. Hence, the petitioner seeks enhancement of the award amount as prayed for.

8. Per contra, the learned counsel for the respondent contends that the tribunal has considered the evidence available before the Court properly and arrived at just and proper compensation amount. According to the respondent, there is no need to interfere with the award passed by the tribunal. Hence, the respondent seeks dismissal of the appeal.

9. The petitioner who was examined as P.W.1 stated that while he was riding his motor cycle in Anna Salai near Nandhanam on 30.07.2012 at about 12.00 hours, the respondent-bus came at high speed dashed against the petitioner's motor cycle, resulting in grievous injuries to him. The petitioner produced Ex.P1, Copy of the F.I.R in Crime No.369 of 2012 on the file of R4 Pondy Bazar Traffic investigation and also Ex.P2, Copy of the Accident Register to prove his contention. The said F.I.R is registered against the driver of the respondent-Corporation bus only. Even though, the driver of the respondent bus deposed R.W.1 and stated that the accident of occurred only due to rash and negligent driving of the petitioner on the left side of the bus who tired to overtake the bus without following traffic rules, cannot be accepted in view of Ex.P1, F.I.R being registered against the respondent driver only. In such circumstances, the finding of the tribunal that the accident occurred due to negligence of the respondent-bus driver is just and proper.

10. The petitioner states that he suffered fracture and grievous injuries and took treatment as inpatient in a private hospital from 30.07.2012 to 22.08.2012. Ex.P2, Copy of Accident

Register and Ex.P3, Discharge Summary proved the fact of the treatment as inpatient on the injury suffered by him. It is also stated by the petitioner that Split skin grafting was done on 16.08.2012. The petitioner examined P.W.2, Doctor who assessed the disability suffered by the petitioner to prove his claim. P.W.2 assessed the disability at 45% in respect of the injuries sustained by the petitioner. However, the said Doctor has not given treatment to the petitioner and P.W.2 admits that this is not a schedule injury.

11. In such circumstances, the learned counsel for the respondent has contended that the percentage of disability suffered by the petitioner cannot be 45% and the evidence of P.W.2 in that regard is unacceptable. However, taking into consideration the nature of injuries suffered by the petitioner as evidenced by the Ex.P2, Copy of the accident register. Ex.P6, X-Ray. Ex.P5, photos with C.D and the evidence of P.W.2 Doctor and Ex.P7, Disability Certificate, it will be appropriate to fix the disability suffered by the petitioner at 30%. For the same, at the rate of Rs.3,000/- per percentage is to be granted. Thus, "for loss of income" to the petitioner due to disability, the following sum is to be awarded.
(Rs.3,000/-x30=Rs.90,000/-)

12. The petitioner claims that he was doing travel business and was earning Rs.10,000/- at the time of the accident. However, no material is placed before the Court to prove the avocation and income of the petitioner. As evidenced by Ex.P3 Discharge Summary, the petitioner has taken treatment as inpatient for nearly 24 days in a private hospital. Further, in view of the fracture suffered by the petitioner in the right leg, he could not have moved around to carry on his business at least for a period of 3 months. Even though the petitioner has not produced any record to prove his monthly earnings, it would be appropriate to fix the notional income of the petitioner at Rs.7,500/-. As he could not move around for 3 months, he would have suffered total loss of earning during that period. Hence, for the "loss of earning" during the period of treatment, the following sum has to be granted:-
(Rs.7,500/-x3=Rs.22,500/-)

13. The petitioner states that he was treated as inpatient for nearly 24 days in the hospital and subsequently, he is taking treatment till date. In such circumstances, it will be appropriate to grant Rs.10,000/- towards "transport charges".

14. Considering the period of treatment and nature of injury, the petitioner would have been in need of an attender to take care of him. Hence, for "attender charges", a sum of

Rs.15,000/- is awarded; Under the head "pain and suffering" a sum of Rs.45,000/- is awarded; For "extra nourishment" Rs.20,000/- is awarded; "for damage and loss" Rs.1000/- is awarded; The petitioner has produced Ex.P4, Medical Bills. Considering the nature of treatment undergone by the petitioner and the period of treatment as inpatient and attender charges, it will be appropriate to give Rs.1,20,000/- as "medical expenses" and towards "loss of amenities" a sum of Rs.15,000/- is provided.

17. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of earnings	Rs. 20,000/-	Rs. 22,500/-
2	Transport to Hospital	Rs. 7,000/-	Rs. 10,000/-
3	Extra nourishment	Rs. 12,000/-	Rs. 20,000/-
4	Damage to clothing	Rs. 500/-	Rs. 1,000/-
5	Medical expenses	Rs. 1,18,701/-	Rs. 1,20,000/-
6	Pain and suffering	Rs. 30,000/-	Rs. 45,000/-
7	Disability at 30% at Rs.3000/- per percentage as modified by this court	Rs. 30,000/-	Rs. 90,000/-
8	Attender charges		Rs. 15,000/-
9	Loss of Amenities		Rs. 15,000/-
	Total	Rs. 2,18,201/-	Rs. 3,38,500/-

18. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is modified to Rs.3,38,500/- from Rs.2,18,201/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above modified award amount, the respondent/Transport Corporation Limited is directed to deposit the award amount, less the amount, if any, already deposited, along with proportionate interest within a

period of six weeks from the date of receipt of a copy of this order.

- (iv) On such deposit, the injured claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) There will be no order as to costs in this appeal. Consequently, connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to M/s.K.Varadhakamaraj, Advcoate Sr.No.6336

MP(CO)

sm:6.4.2018

C.M.A.No.2422 of 2015 and

C.M.P.No.686 of 2018

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