

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.09.2018	Delivered on 26.09.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2422 of 2016

R.Gopal @ Gopalakrishnan ... Appellant/Petitioner

-vs-

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

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the award dated 16.12.2014 made in MACTOP.No.3906 of 2012 on the file of the Motor Accident Claims Tribunal (In the Court of III Court of Small Causes, Chennai).

For Appellant : Mr.F.Terry Chella Raja

For Respondent : Mr.S.S.Swaminathan

J U D G M E N T

R.SUBRAMANIAN, J.

1. Terming the compensation of Rs.1,71,619/- awarded by the Tribunal for the injuries suffered by him as low, the claimant has come forward with this appeal.

2. The claimant sought for a compensation of Rs.35,00,000/- for the injuries suffered by him in a motor accident that took place on 20.06.2012 at about 20.30 hours. According to the claimant, while he was travelling as a passenger in the bus belonging to the respondent Corporation bearing registration No.TN-01-N-4447 from Kannagi Nagar to Velacherry, the bus was driven in a rash and negligent manner by its driver and dashed against the electricity pole. Due to the accident the claimant sustained grievous injuries. Contending that the injuries had resulted in a permanent disability as well as loss of earning power, the claimant sought for a compensation as stated above.

3. The claim was resisted by the respondent Corporation, contending that there was no negligence on the part of the bus driver. According to the Corporation, there was a heavy traffic jam and the bus was moving at a very slow pace. While so, the bus driver spotted the claimant sitting in a negligent manner stretching his right hand outside the bus. Despite warnings, the claimant did not withdraw his hand. Since a cyclist crossed the road suddenly, the driver of the bus had to apply brakes and swerve to right to avoid a collision with the cyclist. In that process the bus grazed against the electricity pole, causing injuries to the right hand of the claimant. Terming the accident as one caused by the negligence of the claimant, the Corporation sought for dismissal of the Original Petition.

4. The Tribunal on a consideration of the evidence on record concluded that the accident was caused due to the rash and negligent driving of the bus, since the bus driver was not examined by the Corporation. The Tribunal also relied upon the FIR copy which was lodged by one Shankar. The Corporation has not challenged the findings of the Tribunal regarding negligence. On the quantum, the Tribunal found that the nature of injuries would not have an effect on the earning power of the claimant and granted a compensation of Rs.1,71,619/-. Aggrieved the claimant is on appeal.

5. Since the Transport Corporation has not challenged the award the only question that is to be decided is the sufficiency of quantum of compensation. From the evidence on record, it is found that, the claimant had sustained a grade IIIA compound fracture of right supracondylar humerus with IC extension and right ulna nerve contusion. He was also given occupational therapy at ESI Hospital. Though, the Doctor who had given the disability certificate was examined as PW2 and he assessed the disability at 65%, the Tribunal has taken the disability only at 35% since PW2 had admitted that he did not treat the patient.

6. The injured claimant would contend that he was a purse maker with M/s.Sri Lakshmi Export and earning Rs.10,000/- per month. No evidence was produced to show his monthly income, however a loss of pay certificate was produced as Ex.P10, but the said document has not been proved by examining a proper person.

7. The Tribunal took the notional income at Rs.6,000/-. Therefore, the Tribunal granted the loss of income during the treatment period at Rs.30,000/- for the period of five months. Considering the fact that he had undergone surgery twice the Tribunal granted a sum of Rs.40,000/- towards pain and suffering. The Tribunal also granted a sum of Rs.70,000/- towards permanent disability at the rate of Rs.2,000/- per percentage of disability.

8. We have heard Mr.F.Terry Chella Raja, learned counsel appearing for the appellant and Mr.S.S.Swaminathan, learned counsel appearing for the Corporation.

9. Mr.F.Terry Chella Raja, learned counsel appearing for the appellant/ Claimant would strenuously contend that the Tribunal should have awarded a certain amount towards loss of earning capacity. He would submit that the disability caused to the right hand would have a telling effect on the earning power, considering the profession of the claimant viz., a purse maker.

10. We however find that the evidence on this aspect is totally lacking. It is in evidence that the claimant is continuing in the same job. Therefore, there cannot be any loss of income attributed to the injury or the disability suffered because of the injuries. In the absence of such evidence, we cannot presume loss of earning capacity and make an award. In Raj Kumar Vs. Ajay Kumar and another reported in 2010 (2) TN MAC 581 (SC), the Hon'ble Supreme Court had in fact cautioned the Tribunals from awarding compensation on the ground of loss of earning power mechanically without arriving at a finding as to whether there was actual loss of earning power.

11. We therefore find that there is no scope for awarding any amount under the head of loss of earning power in the case on hand. We however find that the award of the Tribunal on certain heads needs modification and the same is modified as follows:-

The Tribunal has granted a sum of Rs.30,000/- towards loss of income. We find that the injured has undergone two surgeries and has also undergone occupational therapy with the ESI Hospital, therefore it is clear that he would have been disabled from carrying on his regular avocation as a purse maker atleast for a period of five months. The Tribunal has taken his salary at Rs.6,000/-, it is common knowledge that the labourers working in a leather industry, it being an export oriented industry, are paid at a better rate than others. Considering the date of accident we find that the monthly income can be safely assessed at Rs.10,000/-. Therefore, the loss of income during treatment period would have to be enhanced to Rs.50,000/-. The compensation awarded under other heads viz., transport to hospital at Rs.10,000/-, extra nourishment Rs.12,000/-, damage to clothing Rs.500/-, medical expenses Rs.4,119/- are all confirmed. The compensation awarded towards pain and suffering and loss of amenities are enhanced to Rs.50,000/- and Rs.10,000/- respectively. The Tribunal has awarded Rs.70,000/- towards permanent disability at Rs.2,000/- per percentage. Since the accident has occurred in 2012 it should have been awarded at Rs.3,000/- per percentage. Therefore, the award under the head of disability is enhanced to Rs.1,05,000/-. Thus, the total compensation works out to Rs.2,41,119/-.

Award towards		Amount
Loss of income	:	Rs. 50,000/-
Transport to hospital	:	Rs. 10,000/-
Extra nourishment	:	Rs. 12,000/-
Damage to clothing	:	Rs. 500/-
Medical expenses	:	Rs. 4,119/-
Loss of amenities	:	Rs. 10,000/-
Pain and suffering	:	Rs. 50,000/-
Disability at 35% at Rs.3,000 per percentage	:	Rs.1,05,000/-
Total	:	Rs.2,41,619/-

The same is rounded off to Rs.2,41,700/-. The award will carry interest at 7.5% per annum. The appeal is partly allowed. The Transport Corporation is directed to deposit award amount with proportionate interest and costs within a period of eight (8) weeks from the date of receipt of a copy of the judgment and on such deposit the claimant would be entitled to withdraw the same. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dsa

To

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

2. The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to M/s. M. Malar, Advocate Sr.66739

+ 1 cc to M/s. S.S. Swaminathan, Advocate Sr.66723

CMA.No.2422 of 2016

SJ(CO)

EU(14/11/2018)