

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.291 of 2018

A.John Basha

.Appellant (Claimant)

Versus

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

..Respondent (Respondent)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.10.2014 in M.C.O.P.No.10 of 2013 on the file of Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.M.K.Chandrasekaran

For Respondent : Mr.S.Sivakumar

J U D G M E N T

The appellant has come forward with this appeal against the judgment and decree passed in M.C.O.P.No. 10 of 2013 on 11.10.2014, on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 11.09.2012 at about 9.00 hours, when the petitioner was boarding the respondent corporation bus bearing Registration No.TN-01-N-9712, near the New Secretariat at Anna Salai, Chennai, the driver of the respondent bus suddenly started the bus, as a result of which, the petitioner fell down from the bus, sustained fracture in his left leg, injuries on his head and all over his body. At the time of the accident, the petitioner was aged 22 years and working in a Private Insurance Company earning Rs.7,500/- per month. Due to the injuries suffered by him, the petitioner is not able to attend his work, as he used to prior to the accident. Hence, the petitioner seeks compensation of Rs.3,50,000/- from the respondent/Transport Corporation.

4. On the other hand, opposing the petition by filing counter, the respondent/Transport Corporation disputes the claim of the petitioner and the manner in which the accident occurred. On 11.09.2012, the respondent bus bearing Registration No.TN-01-N-9712 was proceeding in its scheduled trip from Korukkupet to Vandalur Zoo. Around 9.30 hours, as the bus was proceeding in Anna Salai, the conductor gave whistle to stop in Simpson bus stop. After the passengers got down as well on boarded the bus, the conductor gave whistle to start the vehicle. Only after checking whether the passenger has got down, the driver of the bus slowly moved the vehicle. The driver also advised the passenger travelling in foot board to come into the bus. Suddenly, one of the foot board travelling passengers lost the grip, fell down and sustained injuries. The negligence on the part of the said passenger alone caused the accident. The driver of the bus is in no way responsible for the accident. The claim of the petitioner about his age, avocation, income and the injury suffered by him is denied. The claim of the petitioner is exorbitant. Thus, the respondent/Transport Corporation sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and the Doctor who assessed his Disability as P.W.2, produced documents Exs.P.1 to P.8 to prove his claim. On the side of the respondent, the driver of the bus was examined as R.W.1, but no document was produced. The Tribunal, on the basis of available records found that the negligence of the respondent bus driver alone caused the accident and awarded a sum of Rs.1,81,340/- as compensation to the petitioner/claimant. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

6. The learned counsel for the petitioner/claimant contends that the Tribunal fixed the disability at 40% and the same is not proper. The amount awarded by the Tribunal under different heads is on lower side. The Tribunal failed to appreciate the available evidence properly and considering the nature of injury suffered, ought to have provided for future medical expenses also. Thus, the petitioner seeks enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the respondent contended that the Tribunal wrongly fixed the negligence on the part of the bus driver for resulting in the accident and the same is not correct. The negligence of the petitioner alone resulted in the accident and as such, the petitioner is not entitled to any amount as compensation. The Tribunal without considering the materials on record properly, awarded higher amount as compensation and the same is unsustainable. The

petitioner has not made out any ground for enhancement. Thus, the respondent/Transport Corporation seeks dismissal of the appeal.

8. Heard both sides and perused the available material on record.

9. The petitioner who deposed as P.W.1, clearly stated about the manner in which the accident occurred. According to him, while he was boarding the respondent bus at Anna Salai on 11.09.2012 at about 9.00 hours, the driver of the bus without noticing the same, suddenly moved the bus in a rash and negligent manner, as result of which, the petitioner was thrown out of the bus and sustained grievous injuries. The police have registered Ex.P.1-F.I.R, against the driver of the respondent bus.

10. On the other hand, the driver of the said bus who deposed as R.W.1 stated that after he stopped the bus at Simpson bus stop, the passenger got down and after the conductor gave signal to proceed, he slowly moved the bus and at that time, the petitioner who was standing in the foot board lost his grip of handlebar, fell down and sustained injuries. Admittedly, the petitioner was travelling in the bus. It is the responsibility of the driver and conductor of the bus to see that nobody travels by standing in the foot board. It is apparent that the driver of the bus without noticing that the petitioner was standing in the foot board moved the bus. The conductor of the bus has not been examined. However, it is clear from the evidence of P.W.1 and also the evidence of R.W.1 that the petitioner fell down from the bus and suffered injuries. According to the petitioner, it was due to the act of the driver of the bus in suddenly moving the bus, the accident occurred. In Ex.P.1-F.I.R also, the negligence on the part of the driver alone is stated as the cause of the accident. In any event, as the duty of the crew is to prevent anyone from travelling in foot board and as they failed to do so, the finding of the Tribunal that the accident occurred due to the negligence on the part of the respondent driver alone is just and proper and the same needs no interference.

11. The petitioner states that he was employed in the Insurance Company and earning Rs.7,500/- per month. However, no documentary proof is produced regarding his employment and monthly income. Hence, his monthly income is fixed at Rs.5,000/- per month.

12. The petitioner states that he has suffered fracture in the left knee and underwent surgery for the same. According to him, he took treatment as inpatient for one month at S.R.M.Hospital & Research Centre, Kattankulathur. The petitioner produced Ex.P.2-Copy of Accident Register, Ex.P.3-Outpatient Record and also Ex.P.4-Discharge Summary. It is clear from the same that the petitioner was treated as inpatient in the private hospital from 18.09.2012 to 18.10.2012 and took treatment for the fracture of Hoffas bone in his left knee. The Doctor who examined and assessed the disability of the petitioner deposed as P.W.2 and stated that the petitioner is having pain and stiffness in his left knee and the movement of the left knee is restricted. As the petitioner suffered 45% disability, he will find it difficult to walk fastly and to sit with legs crossed or to climb the steps. The Tribunal, after considering the fact that P.W.2 did not give treatment to the petitioner and he has not attached any calculation sheet to Ex.P.7-Disability Certificate, issued by him, fixed the disability suffered by the petitioner at 40%. The Tribunal awarded compensation for the disability at Rs.2,000/- per percentage. Considering the nature of injury suffered by the petitioner and the fact that he underwent surgery in his left leg, it is appropriate to fix the disability at 40%. However, in view of the nature of injury suffered by him and treatment undertaken, it will be appropriate to award compensation for disability at Rs.3000/- per percentage. Accordingly, the compensation under the head "Permanent Disability" is calculated as under:-

$$40 \times \text{Rs.3,000} = \text{Rs.1,20,000/-}$$

Thus, a sum of Rs.1,20,000/- is awarded under the head "Permanent Disability".

13. The petitioner was treated as inpatient for one month as evident from Ex.P.4-Discharge summary. He also took treatment as outpatient from G.H. as well as Private Hospital. In such circumstances, he could not have attended his work at least for 5 months. In such circumstances, it will be appropriate to compensate him under the head "loss of income" during treatment period as follows:-

$$\text{Rs.5000} \times 5 = \text{Rs.25,000/-}$$

Thus, a sum of Rs.25,000/- is awarded under the head "Loss of Income".

14. Considering the nature of injury and the treatment taken by the petitioner, this Court is of the view that the amount awarded by the Tribunal under different heads is to be modified as follows:-

Pain and suffering = Rs.35,000/-
 Transport expenses = Rs.20,000/-
 Extra Nourishment = Rs.20,000/-
 Loss of amenities = Rs.10,000/-
 Attender Charges = Rs.10,000/-
 Medical Expenses = Rs.2,000/-
 Damages of Clothes = Rs.1,000/-

15. In view of the above said discussion, this Court is inclined to modify the amount awarded by the tribunal under different heads as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of Income	25,000.00	25,000.00
2	Transport	15,000.00	20,000.00
3	Extra Nourishment	15,000.00	20,000.00
4	Damages of Clothes	500.00	1,000.00
5	Medical Expenses	840.00	2,000.00
6	Attender Charges	5,000.00	10,000.00
7	Loss of Amenities	5,000.00	10,000.00
8	Pain and Suffering	35,000.00	35,000.00
9	Disability	80,000.00	1,20,000.00
	Total	1,81,340.00	2,43,000.00

14. In the result, the Civil Miscellaneous Appeal filed by the appellant/Injured Claimant is Partly Allowed with costs as follows:-

(1) The award granted by the Tribunal is modified and enhanced from Rs.1,81,340/- to Rs.2,43,000/-

(2) 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;

(3) In view of the above modified award amount, the respondent/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with proportionate accrued interest and costs within a period of six weeks from the date of receipt of a copy of this order;

(4) On such deposit, the injured claimant is permitted to withdraw the modified amount awarded along with accrued interest, less the amount already withdrawn, 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.

Sd/-
Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

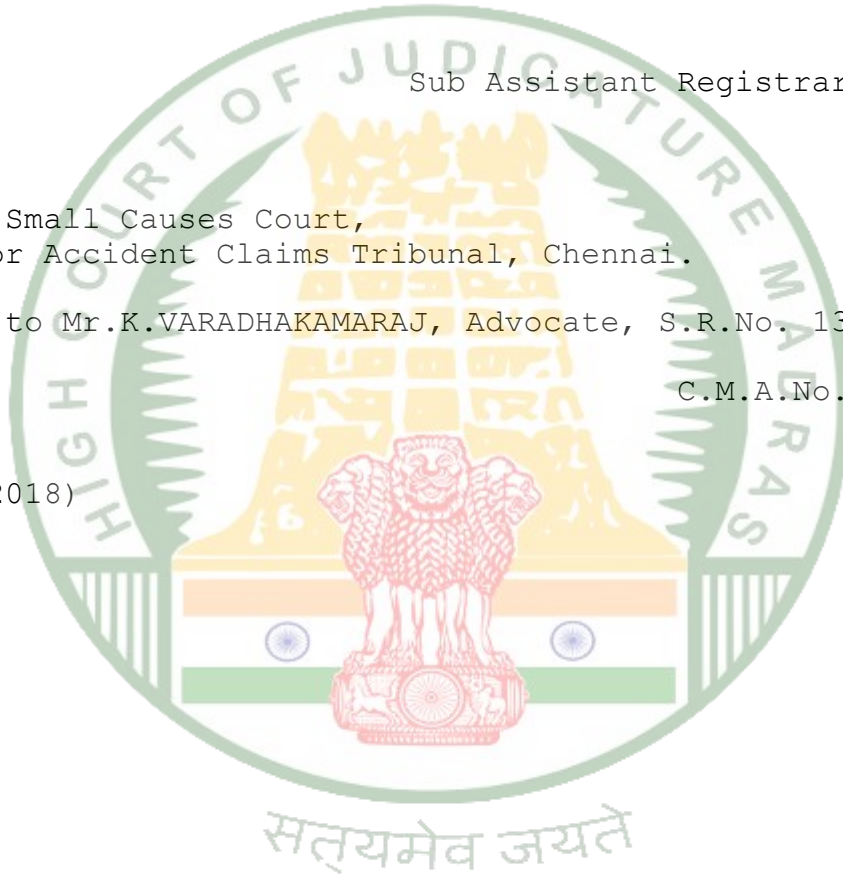
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To

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

+1cc to Mr.K.VARADHAKAMARAJ, Advocate, S.R.No. 13880

C.M.A.No.291 of 2018

SV(CO)
TR(09/04/2018)



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