

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.333 of 2018

Noor Mohammed

... Appellant

...vs...

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

...

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal Order dated 15.07.2013 made in MCOP.No.5089 of 2011 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.M.Viswanatha Rao
For Respondent : Mr.S.Shivakumar

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 15.07.2013 made in MCOP.No.5089 of 2011 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai, the petitioner/claimant filed this present appeal for enhancement of award amount.

2. Both parties consent, this appeal is disposed of at the stage of admission itself.

3. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

4. The case of the petitioner is that on 28.09.2011 at about 18.25 hours, while the petitioner was walking near Tharapoor Tower, Anna Salai, Chennai, the respondent Transport

Corporation Bus bearing Registration No.TN-01-N-9740, came at high speed, driven in a rash and negligent manner dashed against the petitioner causing him multiple grievous injuries and also fracture in his left knee. The accident occurred only due to the negligence of the respondent bus driver only. The petitioner was aged about 32 years and was employed as Pharmacist in Corporation of Chennai, earning a sum of Rs.23,000/- per month. Due to the injuries suffered, he is unable to attend to his normal work. Hence, the petitioner seeks a sum of Rs.6,00,000/- as compensation from the respondent Transport Corporation.

5. On the other hand, opposing the claim petition, the respondent Transport Corporation by filing counter contends that there was no negligence on the part of the respondent's bus driver and it is only due to the negligence of the petitioner, the accident occurred. While the respondent's bus was proceeding at normal speed in Anna Salai, opposite to Tharapoor Tower, a male pedestrian, the petitioner herein suddenly crossed the Anna Salai from right to left without caring for the traffic, as a result of which, after realising the on coming bus, on seeing the same, he lost the balance, fell down on the road and sustained injuries. There is no connection between the injuries suffered by the petitioner and the respondent's bus. The police has wrongly registered the first information report against the driver of the respondent bus. The claim of the petitioner about the age, avocation and income is denied. The claim of the petitioner under different heads is exorbitant. Thus, the respondent sought for dismissal of the petition.

6. Before the Tribunal, the injured petitioner examined himself as P.W.1 and medical expert was examined as P.W.2 and another witness was examined as P.W.3 and produced documents Ex.P1 to Ex.P15 to prove his claim. On the side of the respondent, the driver of the bus deposed as R.W.1 but no document was produced.

7. The Tribunal, on the basis of materials available on record, found the negligence of the respondent's bus driver alone caused the accident, passed award for a sum of Rs.2,46,000/- as compensation to the petitioner. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

8. Heard the learned counsel appearing for the petitioner / appellant and the learned counsel appearing for the respondent Transport Corporation and perused the materials available on record.

9. The learned counsel appearing for the appellant/petitioner contends that the Tribunal failed to

appreciate the evidence available on record properly and passed an Award for a meager amount. The petitioner having suffered Grade -III B compound fracture and other grievous injuries, is prevented from carrying on his work as he used to be resulting in mental agony and loss of income. The Tribunal ought to have applied the multiplier method to calculate the damages. The Tribunal wrongly reduced the disability from 45% to 40%. The amount provided under the different heads is very low. Hence, the petitioner seeks to entertain the appeal and enhance the quantum of award passed by the Tribunal.

10. Per contra, the learned counsel appearing for the respondent-Transport Corporation contends that as the negligence of the petitioner alone resulted in the accident, he is not entitled to seek compensation. Further, there is no evidence to prove the petitioner suffered from functional disability. There is no proof that the petitioner suffered loss of income. The award passed by the Tribunal itself is on the higher side. There is no ground to enhance the award amount. Thus, the respondent Transport Corporation sought for dismissal of this appeal.

11. The petitioner who suffered injuries in the accident deposed as P.W.1 and he has clearly stated about the manner in which the accident occurred. The police also have registered the case as per Ex.P1 First Information Report against the respondent's bus driver only. Even though, the driver of the respondent corporation bus deposed as R.W.1, he admitted the accident and also the first information report being registered against him. However, it is stated by R.W.1 that he is not responsible for the accident. Being an interested witness, no weightage can be given to the evidence of R.W.1. In view of the police registering the case against R.W.1 and the facts furnished by P.W.1, it is clear that the accident occurred only due to the negligence of the respondent's bus driver only.

12. The petitioner who deposed as P.W.1 stated that he was employed as Pharmacist in Chennai Corporation earning a sum of Rs.23,000/- per month. He stated that in the accident, he suffered fracture in his left knee, thigh and also various multiple grievous injuries. After the accident, he took treatment in the Government Hospital, Chennai as inpatient and thereafter at Soundharapandian Bone and Joint Hospital, Chennai. He produced the discharge summary issued by the Government Hospital, Chennai as Ex.P3, wherein it is clearly stated that the petitioner suffered Grade-III B compound fracture lateral condyle femur left and the petitioner underwent surgery on 29.09.2011 and treated as inpatient from 28.09.2011 to 17.11.2011. Subsequently, he underwent surgery for removal of K-wire fixation and took treatment as inpatient for one day in Soundharapandian Bone and Joint Hospital. The petitioner produced the photographs and CD as Ex.P13 to show the injuries

suffered by him.

13. P.W.1 further stated that he is finding it difficult to climb steps, to bend his left leg and walking for long time. Thus, P.W.1 clearly stated about the grievous injuries suffered by him. He also examined the medical expert as P.W.2 and according to the Doctor, the petitioner suffered permanent disability at the rate of 45%. The disability certificate issued by him and X-ray taken to assess the disability are produced as Ex.P14 and Ex.P15 respectively. The Tribunal, after considering the oral evidence of P.Ws.1 and 2, keeping in mind the fact that the petitioner was not treated by P.W.2 and no calculation sheet was filed along with Ex.P14 disability certificate issued by P.W.2 Doctor and considering the other other evidence available fixed the disability at 40% and awarded a sum of Rs.2,000/- per percentage to compensate the petitioner for the disability suffered by him. This Court is inclined to accept the reasoning of the Tribunal and it is just and proper to fix the disability at 40%. However, considering the fact that the accident occurred on 28.09.2011 and the nature of injuries suffered by the petitioner, it will be appropriate to compensate the petitioner at the rate of Rs.3,000/- per percentage instead of Rs.2,000/- fixed by the Tribunal. Thus, the loss of disability is calculated as follows. $\text{Rs.3,000/-} \times 40\% = \text{Rs.1,20,000/-}$.

14. The petitioner states that he was employed as Pharmacist in Chennai Corporation earning a sum of Rs.23,000/- per month. To prove the same, the staff of the Corporation of Chennai who deposed as P.W.3 stated that the petitioner was working in Corporation of Chennai and produced documents in support of the same. The petitioner also produced the Pharmacist Registration Certificate as Ex.P8, appointment order issued to the petitioner by the Chennai Corporation as Ex.P9, identity card as Ex.P10 and the Salary slip as Ex.P11. The petitioner also produced copy of his Bank Pass Book as Ex.P12. It is clear from the above documents produced by the petitioner that he availed leave from 28.09.2011 to 05.02.2012. While the period from 28.09.2011 to 07.10.2011, he has taken as medical leave, salary has been given to him. From 08.10.2011 to 05.02.2012, he has availed leave on loss of pay with medical certificate. Further, he could not have attended to his normal work for some more time also. Hence, it will be appropriate to compensate him for a period of 6 months. Admittedly, his basic salary is Rs.13,910/-. Thus, the loss of income during treatment period is calculated as follows. $\text{Rs.13,910/-} \times 6 = \text{Rs.83,460/-}$. The petitioner produced the medical bills as Ex.P5 and Ex.P6. Taking into account the same and the injuries suffered, a sum of Rs.1,40,860/- is provided for medical bills. The Tribunal awarded the various amount under different heads and the same is enhanced as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of earning	55,640.00	83,460.00
2.	Transport to Hospital	7,000.00	10,000.00
3.	Extra-nourishment	7,000.00	10,000.00
4.	Damage to cloths	500.00	500.00
5.	Medical Expenses	65,860.00	1,40,860.00
6.	Pain and sufferings	30,000.00	40,000.00
7.	Permanent disability	80,000.00	1,20,000.00
8.	Loss of amenities	-	25,000.00
	Total	2,46,000.00	4,29,820.00

Accordingly, the compensation awarded by the Tribunal is modified and the same is enhanced to Rs.4,29,820/- and the same is rounded to Rs.4,30,000/-.

15. In the result, this appeal is partly allowed. No costs. The sum of Rs.2,46,000/- awarded by the Tribunal dated 15.07.2013 made in MCOP.No.5089 of 2011 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai, is hereby enhanced to Rs. 4,30,000/-. The respondent Transport Corporation is directed to deposit the entire enhanced award amount of Rs.4,30,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The petitioner is not entitled to interest for the defaulted period of 1349 days in filing the appeal. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The IV Judge,
Small Causes Court,
Chennai.

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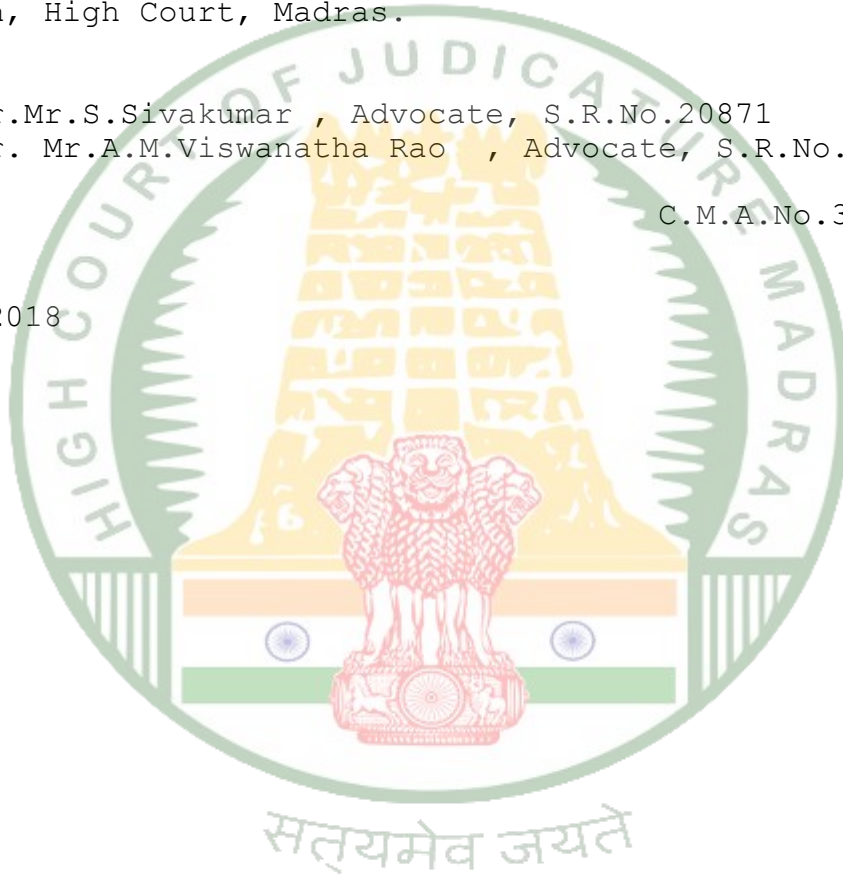
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.Mr.S.Sivakumar , Advocate, S.R.No.20871

+1cc to Mr. Mr.A.M.Viswanatha Rao , Advocate, S.R.No.26091

C.M.A.No.333 of 2018

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