

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.357 of 2018

M.Sugumar

... Appellant/Petitioner

...VS...

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallvan Salai, Chennai-2 ... Respondent/Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the order and Decree dated 20.03.2015 made in MCOP.No.3787 of 2013 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For Respondent : Mr.K.S.Suresh

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 20.03.2015 made in MCOP.No.3787 of 2013 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai, the petitioner/claimant filed this present appeal for enhancement of award amount.

2. By consent of both counsels, this matter is disposed of at the admission stage 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 30.12.2010 at about 9.45 hours, while the petitioner was travelling as a passenger in the respondent Corporation Bus bearing Registration No.TN-01-N-3957, near Ganesh Nagar Bus Stop in Medavakkam Main Road, the driver of the bus without noticing the passengers boarding into the bus, suddenly started the bus, as a result of

which the petitioner fell down from the bus and the left side wheel of the bus ran over him causing grievous injuries including Fracture of multiple pelvic appearing bladder/compound fracture left femur and lacerated wound over lateral aspect of left thigh and multiple injuries in all over the body. The petitioner was aged about 19 years and by working as electrician was earning Rs.500/- per day. Due to the injuries suffered by him, he is not able to attend to his work regularly as before. Hence, the petitioner seeks a sum of Rs.15,00,000/- as compensation from the respondent Transport Corporation.

5. On the other hand, opposing the claim petition, the respondent Transport Corporation filed counter, disputing the claim of the petitioner about the manner in which the accident occurred. The respondent bus in Rout No.B-51 was proceeding from Tambaram East to T.Nager and at about 9.45 hours, near Keelkattalai, Ganesh Nagar, as the bus was moving slowly, the conductor whistled to stop the bus at Ganesh Nagar Bus Stop. Accordingly, the driver stopped the bus and after the passengers boarded the bus, the driver moved the bus slowly, at that time, a male aged about 19 years was seen by the driver running along the slow moving bus intending to board the bus through the front side door. On seeing this, the driver applied sudden brake to stop the bus, but, even before the bus came to stop, the male passenger tried to board the bus through front side foot board. In the attempt, the male passenger lost his grip fell down on the road and sustained injuries. The accident occurred only due to the fault of the said passenger. The respondent Transport Corporation bus driver was not negligent and they are not liable to pay any compensation. The claim of the petitioner about the age, avocation and income is denied. The amount claimed by the petitioner is highly excessive. Hence, the respondent Transport Corporation sought for dismissal of the petition.

6. Before the Tribunal, the injured petitioner examined himself as P.W.1, medical expert was examined as P.W.2 and produced documents Ex.P1 to Ex.P8 to prove his claim. On the side of the respondent, the driver of the respondent bus was examined as R.W.1, but no document was produced.

7. The Tribunal, on the basis of materials available on record, found the driver of the respondent Transport Corporation bus alone caused the accident and awarded a sum of Rs.2,01,500/- 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 second respondent and perused the materials available on record.

9. The learned counsel appearing for the petitioner/claimant contends that due to the injuries suffered by him, he is unable to do his work as Electrician and he is suffering from functional disability. The Medical Expert has opined that the petitioner cannot do any hard work. The Tribunal erred in fixing the percentage of disability, lesser than the assessment of the Doctor and the Tribunal wrongly awarded Rs.2,000/- per percentage. The amount awarded by the Tribunal under the different heads is on the lower side. Thus, the learned counsel appearing for the petitioner/claimant seeks to entertain the appeal and to enhance the quantum of award.

10. Per contra, the learned counsel appearing for the respondent Transport Corporation contends that the Tribunal without appreciating the evidence properly fixed the negligence on the part of the respondent driver alone as cause for the accident. The amount awarded by the Tribunal under the various heads is highly excessive. Since the accident occurred only due to the negligence of the petitioner, as such the claim of the petitioner is unsustainable. No ground is made out for enhancement of award amount. Thus, the respondent seeks dismissal of the appeal.

11. The petitioner, who is the injured in the accident clearly stated in his evidence that without noticing the passengers were boarding the bus, the driver of the respondent Transport Corporation bus bearing Registration No.TN01-N-3957, moved the bus from the bus stop, as a result of which the petitioner fell down from the bus and the left front side wheel of the bus ran over the petitioner's hip resulting in grievous injuries. The Police also registered Ex.P1 First Information Report against the driver of the respondent bus only. Thus, the petitioner contended that the negligence of the respondent bus driver alone caused the accident.

12. On the other hand, the driver of the respondent bus, who deposed as R.W.1 stated that after moving the bus from the bus stop for few meters, he saw the victim trying to get into the moving bus through the front entrance. As he applied the brake to stop the bus, the victim lost his grip and fell down. However, as rightly pointed out by the learned counsel for the petitioner that R.W.1 is a interested witness and whatever he says will be with intention to save himself. AS such, in the absence of any other witness to support his version, the evidence of R.W.1 cannot accepted.

13. Further, the Police have registered Ex.P1 First Information Report against the driver of the respondent only. If what R.W.1 says is true and if he was moving the bus slowly from the bus stop and if he had seen the injured trying to get into

the moving bus, he would have stopped the bus in time to prevent the occurrence. However, he has not done so. In such circumstances, it is apparent from the evidence of P.W.1 and the contents of Ex.P1 First Information Report that the accident occurred only due to the rash and negligent driving of the respondent Transport Corporation bus driver.

14. The petitioner claims himself to be electrician earning Rs.500/- per day. However, as there is no proof for his employment or earnings, the Tribunal has assessed the monthly income at Rs.5,000/-. The petitioner states that he suffered Fracture of multiple pelvic appearing bladder/compound fracture left femur and lacerated wound over lateral aspect of left thigh and multiple injuries in all over the body. He produced Ex.P2 Wound Certificate and Ex.P3 Discharge Summary to prove that he took treatment as inpatient from 30.12.2010 to 10.02.2011 and produced Ex.P6 Photos with CD to prove the nature of injuries suffered by him. The Doctor who deposed as P.W.2 clearly stated that after personally examined the petitioner, he found stiffness in the left hip and thigh and the petitioner is still having pain. The movements of his thigh is also restricted. The petitioner finds difficulty in walking, climbing steps and sitting cross legged. The disability certificate issued by him is produced as Ex.P8. However, the Tribunal, on the ground that P.W.2 Doctor did not give treatment to the petitioner and no calculation sheet is filed with Ex.P8 before the Tribunal and taking into consideration the nature of fracture and other injuries suffered by the petitioner, fixed the disability at 50% and awarded Rs.2,000/- per percentage. Opposing the same, the learned counsel appearing for the petitioner contends that the amount for per percentage by the Tribunal be enhanced to at least Rs.3,000/-. Taking in to account the number of injuries and also the nature of injuries suffered by the petitioner, it will be appropriate to compensate for his 50% disability at the rate of Rs.3,000/- per percentage. Hence, the disability loss is calculated as follows. $50\% \times \text{Rs.3000/-} = \text{Rs.1,50,000/-}$. The same is awarded as compensation under the head of permanent disability.

15. Similarly, the petitioner having suffered number of fractures and multiple grievous injuries would have for pain and sufferings and for the same, it will be appropriate to give Rs.50,000/- under the head of pain and sufferings. The petitioner being Electrician, he would not have gone out to do his profession at least for six months. Considering the fact that the Electricians are on high demand, it will be appropriate to fix the loss of income during treatment period at Rs.6,500/- $\times 6 \text{ months} = \text{Rs.39,000/-}$. The Tribunal awarded various amount under the different heads. Taking into consideration the nature of injuries and other attendant circumstances, this Court is inclined to modify the same as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of Income	20,000.00	39,000.00
2.	Transport to Hospital	10,000.00	10,000.00
3.	Extra-nourishment	10,000.00	20,000.00
4.	Damage to Cloths	500.00	500.00
5.	Medical Expenses	15,000.00	15,000.00
5.	Attender Charges	6,000.00	10,000.00
6.	Loss of Amenities	5,000.00	20,000.00
7.	Pain and sufferings	35,000.00	50,000.00
8.	Permanent Disability	1,00,000.00	1,50,000.00
	Total	2,01,500.00	3,14,500.00

Accordingly, the amount awarded by the Tribunal is enhanced to Rs.3,14,500/-.

16. In the result, this appeal is partly allowed. No costs. The sum of Rs.2,01,500/- awarded by the Tribunal dated 20.03.2015 made in MCOP.No.3787 of 2013 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai is hereby enhanced to Rs.3,14,500/-. The respondent Transport Corporation is directed to deposit the entire modified award amount of Rs.3,14,500/- with interest at the rate of 7.5% p.a. from the date of 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. 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/-

Asst.Registrar (CCC)

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Sub Asst. Registrar

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To

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

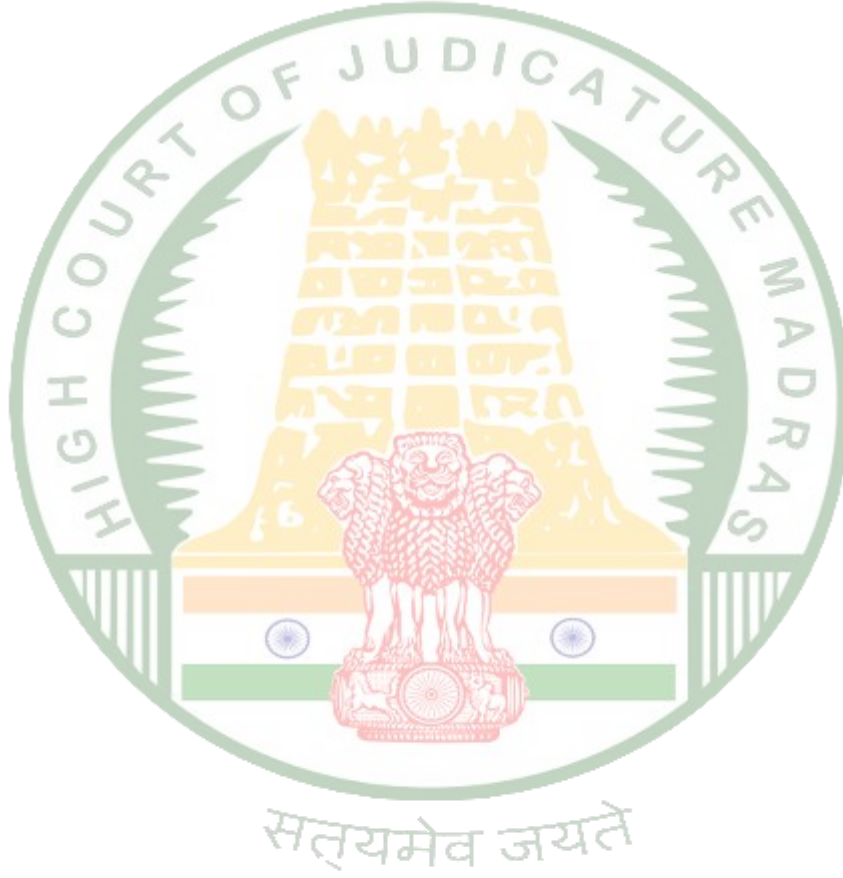
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2.The Section Officer,
VR Section,
High Court, Madras

+lcc to Mr.A.N.Viswanatha Rao , Advocate sr.no.15330

C.M.A.No.357 of 2018

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