

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.08.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Civil Miscellaneous Appeal No.982 of 2016

R.Elumalai

... Appellant

Vs

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

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 18.02.2016 passed in M.C.O.P.No.1956 of 2013 by the Motor Accidents Claims Tribunal (Special Sub Court No.I to deal with MCOP Cases), Chennai.

For Appellant : Mr.S.Ravikumar

For Respondent : Mr.S.Sivakumar

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.1,57,500/- awarded by the Tribunal for the injuries sustained by him in the accident, the appellant has preferred the present Civil Miscellaneous Appeal seeking enhancement of compensation.

2. The appellant is the claimant and he filed the claim petition claiming compensation of Rs.6,00,000/- for the injuries sustained by him in the accident occurred on 05.03.2013.

3. I heard Mr.S.Ravikumar, learned counsel for the appellant and Mr.S.Sivakumar, learned counsel for the respondent.

4.It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the respondent is liable to pay the compensation to the appellant. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the respondent to pay the compensation is confirmed.

5.

5. The only point that arises for consideration in this appeal is whether the appellant is entitled to get enhanced compensation and if so, to what extent.

6. The case of the appellant is that on 05.3.2013 at about 3.15 hours, when he was going with his bicycle along with tea can at Poonamallee High Road, near Vijayakanth Kalyana Mandapam Service Road, Koyambedu, Chennai, a Metropolitan Transport Bus bearing registration No.TN-01 N 4030, owned by the respondent, driven by its driver in a rash and negligent manner and hit against the appellant. Due to the impact, the appellant had sustained fracture and also grievous injuries all over the body. Immediately, after the accident, the appellant was admitted in KMC Hospital, Chennai for treatment.

7. In his evidence, P.W.1 deposed that in the accident, he had sustained fracture clavicle bone left, injury over occipital region, facial injury, injury over both hands and legs and multiple internal and external injuries all over the body. P.W.1 further deposed that due to the injuries sustained, his earning capacity was affected.

8. Assailing the compensation awarded by the Tribunal under the head disability, the learned counsel for the appellant contended that the Tribunal ought to have adopted multiplier method as the appellant had sustained 45% disability.

9. Admittedly, the appellant has not sustained any total permanent disability. Therefore, the Tribunal was right in declining to adopt multiplier method. However, this Court finds that the Tribunal erred in taking the disability at 40% instead 45%.

10. In the case on hand, P.W.2-Doctor examined the appellant and issued Ex.P6-disability certificate assessing the disability at 45%. The Tribunal reduced 5% disability based on the objection raised by the respondent. Admittedly, nothing has been produced by the respondent to show that the assessment made by P.W.2-Doctor is on the higher side. When P.W.2-Doctor assessed the disability at 45% after examining the injured, the Tribunal erred in taking the disability at 40%. This Court is of the view that the Tribunal ought to have taken the disability as assessed by P.W.2-Doctor and as per Ex.P6-disability certificate. Considering the nature of fracture sustained by the appellant, this Court is inclined to take the disability at 45%. Accordingly, adopting Rs.3,000/- per percentage of disability, this Court awarded Rs.1,35,000/- towards disability as against Rs.1,20,000/- awarded by the Tribunal.

11. In his evidence, P.W.1 deposed that at the time of accident, he was doing tea vending business and was earning Rs.500/- per day. Since the appellant has not produced any material to show his income, the Tribunal had taken the monthly notional income at Rs.6,500/- and awarded Rs.6,500/- towards loss of earning during the period of treatment.

12. Considering the avocation of the appellant at the time of accident, this Court is inclined to take the monthly income of the injured at Rs.8,000/-. Due to injuries, he may not have work for nearly four months. Therefore, this Court is inclined to award Rs.32,000/- towards loss of earning during the period of treatment as against Rs.6,500/- awarded by the Tribunal.

13. The Tribunal awarded Rs.5,000/- towards transport charges. This Court finds that Rs.5,000/- awarded by the Tribunal towards transport charges is on the lower side. Considering the fact that the appellant would have spent more amount under this head, it would be appropriate to enhance the same to Rs.10,000/-.

14. The Tribunal awarded Rs.5,000/- towards funeral expenses. Considering the nature of injuries sustained by the appellant and the period of treatment undergone by him, he would have spent more than under the head extra-nourishment. Therefore, Rs.10,000/- is awarded under the head extra-nourishment as against Rs.5,000/- awarded by the Tribunal.

15. The Tribunal awarded Rs.1,000/- towards attender charges. Considering the nature of injuries and also the period of treatment undergone by the appellant, Rs.10,000/- is awarded under the head attender charges as against Rs.1,000/- awarded by the Tribunal.

16. The Tribunal awarded Rs.10,000/- for pain and suffering. As pointed out supra, the appellant had taken treatment as inpatient for ten days and during treatment. Due to injuries sustained by the appellant in the accident, he would have suffered pain and suffering during the period of treatment. Further, he would have suffered mental and physical shock at the time of accident. The pain and suffering are hardships, which is intolerable and cannot be expressed in terms of words and money cannot compensate the same. Having regard to the period of treatment undergone by the appellant and considering the nature of injuries, Rs.10,000/- awarded by the Tribunal is enhanced to Rs.30,000/-.

17. The Tribunal awarded Rs.10,000/- towards loss of future amenities. Considering the nature of injuries, period of treatment and avocation of the appellant, Rs.10,000/- awarded by

the Tribunal towards loss of future amenities is maintained.

18. Thus, the total compensation of Rs.1,57,500/- awarded by the Tribunal is enhanced to Rs.2,22,000/- as under:

Disability	:	Rs.1,20,000/-
Loss of earning for 4 months	:	Rs. 32,000/-
Transport charges	:	Rs. 10,000/-
Extra-nourishment	:	Rs. 10,000/-
Attender charges	:	Rs. 10,000/-
Pain and suffering	:	Rs. 30,000/-
Loss of future amenities	:	Rs. 10,000/-

Total	:	Rs.2,22,000/-

19. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.1,57,500/- awarded by the Tribunal is enhanced to Rs.2,22,000/- payable with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. The respondent is directed to deposit the modified amount with interest as aforesaid before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount with accrued interest on filing proper application before the Tribunal.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Special Sub Court I to deal with MCOP Cases,
Chennai.

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

+1cc to Mr.S.Ravikumar, Advocate, S.R.No.57998

+1cc to Mr.S.Sivakumar, Advocate, S.R.No.57999

Civil Miscellaneous Appeal No.982 of 2016

RSV(CO)

GSP(28/02/2019)