

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1268 of 2018
and
CMP.No.10209 of 2018

The Managing Director,
Tamilnadu State Transport Corporation,
Villupuram Limited,
3/137, Salamedu,
Vazhuthoreddy and Post,
Villupuram District. ... Appellant/Respondent

Vs

M.Rajkamal ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.6.2017 passed in M.C.O.P.No.3208 of 2015 by the Motor Accidents Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.S.Sairaman

For Respondent : Mr.S.Ravikumar

JUDGMENT

Calling into question the award dated 29.6.2017 passed by the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai in M.C.O.P.No.3208 of 2015, the appellant has filed this Civil Miscellaneous Appeal.

2. The respondent herein has filed above claim petition claiming compensation of Rs.30 lakhs for the injuries sustained by him in the accident occurred on 11.07.2012.

3. Briefly stated case of the respondent/claimant is that on 11.7.2012 at about 3.00 hours, when the respondent was riding his motorcycle bearing registration No.TN-29 AK 9280 from south to north in front of K10 Koyambedu Police Station, a bus bearing registration No.TN-32 N 3570 driven by its driver in a rash and

negligent manner dashed against the motorcycle. Due to the impact, the respondent was thrown out of the motorcycle and sustained fracture in left hand and left hip and also multiple injuries all over the body. According to the respondent, at the time of accident, he was aged 26 years and was earning Rs.15,000/- per month by working as Manager in a Private Restaurant at Chennai. After the accident, he was not in a position to do his work as before and his earning power was affected due to injuries. Therefore, he claims a sum of Rs.30 lakhs towards compensation.

4. Denying the manner of accident, the appellant has filed the counter.

5. In order to prove the claim, the respondent examined himself as P.W.1 and Dr.Mathiazhagan was examined as P.W.2 and Exs.P1 to P10 were marked. On the side of the appellant, the driver of the bus was examined as R.W.1 and no document was marked.

6. Finding that the accident occurred due to rash and negligent driving of R.W.1-driver, the Tribunal held that the respondent being the owner of the offending bus is vicariously and statutorily liable to pay the compensation to the respondent. As far as quantum of compensation is concerned, the Tribunal awarded total compensation of Rs.12,40,061/- payable with interest at the rate of 7.5% per annum to the respondent. Aggrieved by the same, the appellant has preferred this appeal.

7. I heard Mr.S.Sairaman, learned counsel for the appellant and Mr.S.Ravikumar, learned counsel for the respondent.

8. Though the learned counsel for the appellant contended that the finding of the Tribunal in respect of negligence is contrary to the evidence on record and unsustainable in the eye of law and in fact nothing has been produced by the appellant to prove that the accident occurred due to rash and negligent driving of the driver of the respondent bus. On a perusal of Ex.P1-FIR, it has been registered against the driver of the respondent bus and the evidence of injured further establish that the accident occurred due to rash and negligent driving of the driver of the respondent bus. Though in his evidence R.W.1-driver of the offending bus denied the manner of accident, he had failed to produce any document to prove the same. Considering the oral and documentary evidence produced before it, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the respondent bus. Since the aforesaid finding of the Tribunal is based on oral and documentary evidence, this Court is of the view that the

Tribunal was right in fastening the negligence on the driver of the respondent bus and the respondent being the owner of the offending bus is liable to pay the compensation.

9. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel for the appellant submitted that without any supporting material, the Tribunal has fixed the monthly income of the respondent at Rs.10,000/- and thus, the total compensation awarded by the Tribunal is against the principles laid down by this Court.

10. On the other hand, the learned counsel for the respondent submitted that taking the monthly income of the respondent at Rs.10,000/- and adopting multiplier method, the Tribunal awarded total compensation of Rs.12,40,061/-, which is just and reasonable and the same need not be interfered with.

11. In the present case, the respondent sustained fracture of left hip and left hand and other injuries, for which, he had taken treatment for 19 days as inpatient. Ex.P5 is the discharge summary issued by Ganga Medical Centre and Hospital Private Limited, Coimbatore from which it is seen that the respondent was admitted on 14.7.2012 and discharged on 01.08.2012 and during treatment, he underwent surgery.

12. P.W.2-Doctor examined the respondent and assessed the disability at 45%. Ex.P10 is the disability certificate. On a perusal of Ex.P10-disability certificate, it is seen that the disability assessed by P.W.2-Doctor is not on the whole body. Considering the nature of injuries sustained by the respondent, 45% disability assessed by P.W.2-Doctor is on the higher. The disability assessed by P.W.2 is not on the whole body and therefore, it would be appropriate to assess the loss of income for the purpose of calculating the loss of earning capacity at 35%.

13. According to the respondent, at the time of accident, he was working as Manager in Private Restaurant at Chennai and was getting salary of Rs.15,000/- per month. Admittedly, the respondent has not produced any material to prove that he was earning Rs.15,000/- per month at the time of accident. In the absence of proof, the Tribunal has taken the monthly income of the deceased at Rs.10,000/-. In my view, the monthly income of Rs.10,000/- taken by the Tribunal is quite reasonable and the same is maintained.

14. Thus, 35% of Rs.10,000/- would come to Rs.3,500/- and the said amount is loss of earning per month. At the time of accident, the respondent was aged 26 years and the same is not in dispute by the appellant. For the age group 26 - 30, the

multiplier to be adopted is 17 and adopting multiplier 17, the loss of earning power is calculated at Rs.7,14,000/-. Accordingly, Rs.7,14,000/- is awarded towards loss of earning power as against Rs.8,16,000/- awarded by the Tribunal.

15. The Tribunal has awarded Rs.1,35,000/- towards disability. There cannot be an award of compensation under two different heads "permanent disability" and "loss of earning power". Therefore, the Tribunal erred in awarding a sum of Rs.1,35,000/- towards permanent disability and the same is deleted.

16. As far as pecuniary loss is concerned, the Tribunal awarded Rs.6,327/- towards loss of income during the treatment period; Rs.4,750/- towards attender charges; Rs.10,000/- towards transport charges; Rs.30,000/- towards extra-nourishment; Rs.1,000/- towards damages to cloths; Rs.96,984/- towards medical expenses and Rs.50,000/- towards future medical expenses. Considering the nature of injuries and the period of treatment undergone by the respondent, amounts awarded under the aforesaid heads (pecuniary loss) are reasonable and the same are maintained.

17. Insofar as non-pecuniary loss is concerned, the Tribunal awarded Rs.20,000/- towards damages for mental agony; Rs.40,000/- towards pain and suffering and Rs.30,000/- towards loss of amenities. Since the amounts awarded under the head non-pecuniary loss are reasonable, the same are maintained. Apart from the heads mental agony, pain and suffering and loss of amenities, as stated supra, the respondent is entitled for Rs.7,14,000/- towards loss of earning power.

18. Thus, the total compensation of Rs.12,40,061/- awarded by the Tribunal is reduced to Rs.10,03,100/- as under:

Heads	Rs.
Loss of earning capacity	7,14,000.00
Loss of Income	6,327.00
Attender charges	4,750.00
Transport charges	10,000.00
Extra-nourishment	30,000.00
Damages to cloths	1,000.00
Medical expenses	96,984.00
Future medical expenses	50,000.00

Heads	Rs.
Mental shock and agony	20,000.00
Pain and suffering	40,000.00
Loss of amenities	30,000.00
Total	10,03,061.00
Rounded off	10,03,100.00

19. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.12,40,100/- awarded by the Tribunal is reduced to Rs.10,03,100/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant 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 respondent permitted to withdraw the entire amount with accrued interest on filing proper application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.S.Ravikumar, Advocate sr.67472

+1cc to Mr.S.Sairaman, Advocate sr.67256

WEB COPY

Civil Miscellaneous Appeal No.1268 of 2018
and
CMP.No.10209 of 2018

nr 05/03/2019