

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.01.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.334 of 2017
and

Civil Miscellaneous Appeal No.24 of 2018
and

CMP.No.17350 of 2017 and CMP.No.336 of 2018

R.Vignesh

... Appellant

(Appellant in CMA.No.334/2017 and
Respondent in CMA.No.24 of 2018)

..vs..

The Managing Director,
Metropolitan Transport Corporation,
Pallavan House, Pallavan Illam,
Chennai-600 002.

... Respondent

(Respondent in CMA.No.334/2017 and
Appellant in CMA.No.24 of 2018)

PRAYER IN CMA NO.334 OF 2017: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and decreetal order dated 26.03.2014 made in MCOP.No.370 of 2009 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai.

PRAYER IN CMA NO.24 OF 2018: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and decreetal order dated 26.03.2014 made in MCOP.No.370 of 2009 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai.

For Appellants : Mr.J.Ramkumar
(Appellant in CMA.No.334/2017 and
Respondent in CMA.No.24 of 2018)

For Respondent : Mr.S.S.Swaminathan
(Respondent in CMA.No.334/2017 and
Appellant in CMA.No.24 of 2018)

JUDGMENT

This civil miscellaneous appeals arises out of the Judgment and decree dated 26.03.2014 made in MCOP.No.370 of 2009 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to in this judgment as arrayed before the Tribunal.

3. The petitioner/claimant states that while he was standing at the Bus stop situated near Tsunami Nagar Arch, Semmenchery, at about 8.30 hours on 01.08.2008, the respondent's corporation bus bearing Registration No.TN-01-N-2520, driven by its driver came in a rash and negligent manner at high speed and ran over him resulting in grievous injuries to him. The petitioner contends that the occurrence was only due to the negligence of the driver of the bus and Ex.P1 First Information Report to substantiate the same. The petitioner also produced Ex.P2 Rough Sketch to prove his contention. The petitioner also stated that he suffered several grievous injuries and disability as evidenced by Ex.P11 and Ex.P13 disability certificate. The petitioner also produced photographs to prove the nature of injuries and disability suffered by him as Ex.P9 and Ex.P12. The petitioner further stated that he took treatment as in patient at different periods for nearly six months and the same is evidenced by Ex.P4 to Ex.P6 discharge summaries. He also produced Ex.P7 Hospital note book to prove the nature of injuries suffered by him. Further, the petitioner examined two daughters as P.W.2 and P.W.3 to substantiate his claim and suffering permanent disability. While, as per Ex.P11 disability certificate, the Doctor who deposed as P.W.2 fixed the disability suffered by the petitioner as 60%. While as per Ex.P13 disability certificate issued by P.W.3, Doctor, the disability of the petitioner is assessed at 35%. The petitioner also produced Ex.P8 Medical bills and Ex.P3 copy of the Accident Register to substantiate his claim of suffering grievous injuries and permanent disability. Thus, the petitioner sought for compensation of Rs.12,00,000/-.

4. On the other hand, opposing the claim of the petitioner, the respondent corporation contended that the petitioner/claimant was negligent resulting in the occurrence and the driver of the respondent corporation bus was not at fault. According to the respondent, when the bus stopped in the bus stop, the passengers rushed to get into the bus and the petitioner/claimant who was a student at the time, was pushed down by the crowd and as other passengers jumped over him and he suffered injuries. Thus, the respondent contends that the occurrence did not take place as alleged by the petitioner, but only due to the negligence of the petitioner himself. The respondent corporation further contends that the driver of the alleged offending vehicle drove the vehicle at normal speed in a very careful manner. Thus, the respondent contends that the driver of the bus is no way responsible for the alleged occurrence and as such they are not liable to pay the compensation.

5. To substantiate his claim, the petitioner examined himself as P.W.1 and Medical experts as P.W.2 and P.W.3. The petitioner also produced Ex.P1 to Ex.P14 to prove his claim and on the other hand, the respondent corporation examined the Conductor of the bus involved in the occurrence as R.W.1, but failed to produce any documents on their side. The trial Court after considering the materials placed before it, found that the accident is taken place only due to the negligent driving of the respondent's bus driver and as such the claim of the petitioner that negligence of the respondent bus alone caused the accident is to be accepted and awarded a sum of Rs.10,21,000/- as compensation to the petitioner.

6. Even though, the respondent corporation filed the appeal contending that the driver of the bus was not responsible for the accident and it was only a mistake of the victim, which resulted in the occurrence is not supported by the acceptable evidence. Further, the driver of the respondent bus was not examined, only the conductor of the bus was examined. In such circumstances, based on the evidence of P.W.1 and Ex.P1 copy of the First Information Report, it is clear that the accident occurred only due to the negligence driving of the driver of the respondent's corporation bus and conclusion of the Tribunal in that regard is just and proper.

7. The petitioner/claimant has come forward with C.M.A.No.334 of 2017 seeking enhancement of the award amount contending that the Tribunal has not adopted multiplier method to fix the disability at 72% much against the settled position of law. It is further contended that the Tribunal failed to give any amount towards future prospectus and as the petitioner was admitted in the Hospital for 225 days, the attender charges should have been given at least Rs.1,00,000/- instead of Rs.50,000/- given to the petitioner. The learned counsel for the petitioner also pointed out that the notional income fixed at Rs.3,000/- per month is very low and it has been enhanced. Hence, the petitioner seeks enhancement of the award passed by the Tribunal.

8. On the other hand, opposing the claim of the petitioner, the learned counsel appearing for the respondent corporation contended that as the occurrence took place only due to the careless act of the petitioner/claimant, he should be held responsible for the accident. It is further pointed out that the Tribunal erred in fixing permanent disability of the petitioner as 72%. It is also pointed out that the compensation of Rs.3,00,000/- towards future medical expenses and Rs.3,00,000/- towards loss of amenities is exorbitant and the same is to be set aside. Hence, the respondent seeks dismissal of the appeal.

9. As stated above, while the claimant/petitioner has filed CMA.No.334 of 2017 seeking enhancement of the award amount, the respondent Corporation has preferred an appeal in

CMA.No.24 of 2018 seeking dismissal of the claim petition.

10. As stated above, the petitioner has let in evidence sufficient enough to prove that the accident occurred only due to the negligence of the respondent's corporation bus driver. There is no material available on record to show that the petitioner fell down while getting into the bus and suffered injuries as other passengers jumped over him. Considering the nature of injury suffered by the petitioner as evidenced by oral and documentary evidence, it is clear that the multiple grievous injuries suffered by the petitioner would have occurred only because, he was hit by the bus. In such circumstances, the finding of the Tribunal that the injured petitioner suffered injuries in the manner alleged by him is to be correct.

11. While the petitioner has come forward with the appeal seeking enhancement of the amount awarded by the Tribunal and the same is opposed by the respondent corporation. It is contended by the learned counsel for the petitioner that the disability calculated by the Tribunal is not in order. According to him, the Tribunal ought to have fixed notional income much higher than of Rs.3,000/- per month. However at the time of accident i.e. on 01.08.2008, the injured petitioner is only a student. In such circumstances, fixing the notional income of the petitioner at Rs.3,000/- by the Tribunal appears to be just and proper. Since, the two Doctors have given different disability level, the Tribunal taking into consideration the evidence of both the Doctors has fixed the disability suffered by the petitioner at 72% and no ground is made out by the respondent corporation to modify the said finding of the Tribunal regarding permanent disability suffered by the petitioner. Thus, the disability of the petitioner is fixed at 72%. In such circumstances, the compensation in respect of disability suffered by the petitioner is calculated as follows: $\text{Rs.3000/-} \times 12 \times 15 \times 72/100 = \text{Rs.3,88,800/-}$.

12. Admittedly, the petitioner has suffered several grievous injuries and he took treatment as inpatient in different hospitals for various periods. It is evidenced that the petitioner took treatment as in patient for nearly 225 days. It is also evident from the medical expert evidence that the petitioner suffered grievous and permanent injuries. It is also further pointed out that the petitioner has need of continuous medical treatment for the rest of his life. It is also pointed out that the petitioner needed additional extra-nourishment to develop his physical condition. In such circumstances, the award of Rs.5,000/- fixed for extra-nourishment by the Tribunal is very low and hence the same is enhanced to Rs.15,000/-. Considering the various injuries suffered by the petitioner and the period of treatment, he took treatment as in patient, it will appropriate that he is compensated in a proper manner. The Tribunal has awarded various amount under different heads as stated earlier. The same appears to be just and proper. Hence,

the amount awarded by the Tribunal under the other different heads are just and proper and the same needs no interference. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Disability 72% (3000x12x15x72/100) Rs. 3,88,800/-	1,44,000.00	3,88,800.00
2.	Transportation Charges	10,000.00	10,000.00
3.	Extra nourishment	50,000.00	50,000.00
4.	Damage to Clothes and articles	500.00	500.00
5.	Medical Expenses	16,500.00	16,500.00
6.	Attender Charges	50,000.00	50,000.00
7.	Pain and sufferings	1,50,000.00	1,50,000.00
8.	Loss of amenities	3,00,000.00	3,00,000.00
9.	Loss of future medical expenses	3,00,000.00	3,00,000.00
	Total	10,21,000.00	12,65,800.00

13. In view of the above modification, the respondent transport corporation is directed to deposit the entire modified award of Rs.12,65,800/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the entire award amount with accrued interest. The Civil Miscellaneous appeal is allowed in the above said terms. No costs. Consequently, connected C.M.P. is closed.

14. In view of the above order passed in CMA.No.334 of 2017, the CMA No.24 of 2018 is dismissed. No costs. Consequently, connected C.M.P. is closed.

Sd/-

Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

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To

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

2. The Section Officer,
VR Section, High Court,
Madras.(2 Copies)

+1cc to Mr.J.Ram Kumar, Advocate SR.No.4413

+2cc to Mr.S.S.Swaminathan, Advocate SR.No.4297

C.M.A.Nos.334 of 2017
and
C.M.A.No.24 of 2018

NMI (CO)
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