

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.748 of 2018

Rajendran

..Appellant/Petitioner

Versus

The Managing Director,
The Chennai Metropolitan Transport
Corporation Limited,
Pallavan House,
Annasalai, Chennai - 600 002. ..Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 25.03.2013 made in M.A.C.T.O.P.No.1 of 2011 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri.

For Appellant : Mrs.M.Malar
For Respondents : Mr.S.Sivakumar

J U D G M E N T

The Petitioner/Claimant has filed this appeal against the order dated 25.03.2013 made in M.A.C.T.O.P.No.1 of 2011 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri.

2. By consent of both the parties, the matter is taken up for final disposal at the time of admission stage itself.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

4. The case of the petitioner/claimant is that on 25.11.2010 at about 14.15 hours, while the petitioner/claimant was walking along 100 feet road near Ashok Pillar, Chennai, the respondent/Transport Corporation bus bearing Registration No.TN-01-N-4609 came at high speed and dashed against the petitioner/claimant, causing him grievous injuries. The petitioner/claimant by working as a security in a private agency was earning Rs.9,500/- per month. Due to the injury suffered, he is unable to attend to his work and suffered loss of income. The accident occurred only due to the negligence of the respondent bus driver. Thus, the petitioner/claimant sought for a sum of Rs.3,50,000/- as compensation from the

respondent.

5. On the other hand, opposing the claim of the petitioner/claimant, by filing counter, the respondent/Transport Corporation contends that the accident did not occur due to the negligence of the bus driver. The bus bearing Registration No.TN-01-N-4609 was proceeding at normal speed in the schedule trip and while going along 100 feet road in Ashok Nagar at about 14.15 hours, as the bus was about to enter the Jawarlal Nehru 100 feet road, due to slow movement of vehicles, the respondent bus driver also reduced the speed and noticed a aged man walking in a zig-zag manner on the left side of the road and immediately the bus driver sounded the horn and applied brakes to stop the bus. However, the said aged man slipped and fell down on the road, in that process the said person leaned on the left side body of the bus and suffered injuries. The respondent bus driver is not responsible for the accident. The claim of the petitioner/claimant is exorbitant. The respondent/Transport Corporation sought for dismissal of the petition.

6. Before the Tribunal, the petitioner/claimant examined himself as P.W.1 and medical expert as P.W.2 produced documents Exs.P.1 to P.15 to prove his claim. The respondent examined the driver of the bus as R.W.1, but no document was produced. On the basis of available evidence on record, the Tribunal found the negligence of the respondent bus driver alone caused the accident and passed an award for a sum of Rs.1,65,000/- payable by the respondent to the petitioner/claimant. Being not satisfied with the quantum of the award, the petitioner/claimant has come forward with the present appeal.

7. The learned counsel for the petitioner/claimant contends that the Tribunal ought to have fixed the loss of earning capacity of the petitioner/claimant at 100% and awarded higher amount as compensation. The petitioner/claimant suffered grievous fracture and he is unable to attend to his normal work. The Tribunal reduced the percentage of the disability fixed by the Doctor at 60% to 40% without any reason. The petitioner/claimant further stated that the amounts awarded under different heads by the Tribunal is very nominal. Thus, the petitioner/claimant sought for enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the respondent/Transport Corporation who took notice, contends that the award passed by the Tribunal itself is on higher side and there is no need or scope to enhance the quantum of the award passed by the Tribunal. Thus, the respondent/Transport Corporation sought for dismissal of the appeal.

9. The petitioner/claimant, who deposed as P.W.1, clearly stated about the manner in which the accident occurred. The

police registered a case against the 1st respondent bus driver only as per Ex.P.1 - F.I.R. Further after completion of investigation, police filed final report on evidence by Ex.P.11, against the respondent bus driver only. On the other hand even though the respondent examined the driver of the bus as R.W.1 and he stated that it was only due to negligence of the petitioner/claimant the accident occurred, he being an interested witnesses his evidence cannot be taken into consideration. In the absence of any corroborative material produced by the respondent, if really, the accident occurred as claimed by the respondent/Transport Corporation, the driver of the bus would have lodged the complaint instead of complaint being registered against the bus driver himself. As such, on the basis of P.W.1, evidence and contents of Ex.P.1 - F.I.R and Ex.P.11 - Charge sheet, the Tribunal has rightly fixed the negligence on the part of the respondent bus driver, which resulted in the accident. The said finding needs no interference.

10. The petitioner/claimant contends that the quantum of the award passed by the Tribunal is very nominal and the disability fixed by the medical expert at 60% ought to have been accepted by the Tribunal, but failed to do so. It is further contended that in view of fracture and grievous injury suffered, the petitioner/claimant is not able to attend to his regular work and as such, the Tribunal ought to have provided for loss of income during the treatment period. Likewise, the petitioner/claimant contended that due to the injury suffered, he is unable to stand or walk for long time and finds difficulty in attending to day to day regular work. As such, the petitioner/claimant pleaded that higher compensation is to be award, for the personal disability suffered by the petitioner/claimant. On the other hand, disputing the same, it is contended by the Tribunal that the petitioner did not suffer any functional disability and as such, the Tribunal fixing 40% of disability itself is excessive. Considering the rival contention and the fact that P.W.2 - Doctor, did not give treatment to the petitioner/claimant and the disability certificate issued by him is not supported by any calculation sheet, the Tribunal is justified in fixing the disability suffered by the petitioner/claimant at 40%. However, the conclusion of the Tribunal to given a lump sum payment for the disability suffered by the petitioner is not proper. Hence, for the 40% disability, it will be appropriate to compensate the petitioner/claimant at the rate of Rs.3,000/- per percentage. Thus, the disability compensation will be $\text{Rs.3,000} * 40 = \text{Rs.1,20,000/-}$.

11. Considering the fact, the petitioner/claimant was working as a security in a private agency, it would not have been possible for him to attend to his work at least for a period of three months as he suffered fracture and multiple grievous injuries. Even though the petitioner/claimant stated that he was earning Rs.9,500/- per month, no salary

certificate is produced. As such, on the basis of Ex.P.12 - Identity card of the petitioner/claimant, keeping in mind, the fact that he was employed as security, it will be appropriate to fix his notional monthly income at Rs.3,500/-. In view of the injury suffered, he would not have attend to his work at least for three months. Hence, loss of income during treatment period is calculated as follows:-

$$\text{Rs.6500} * 3 = \text{Rs.19,500/-}$$

Thus, a sum of Rs.19,500/- is granted as compensation under the head "Loss of Income".

12. As the petitioner/claimant suffered contusion over the right temporal region, a soft tissue hematoma lesion noted in the left fronto parietal region and over the left orbit, ill defined litic line noted in the left side of frontal bone, hyperdense lesion noted on the right temporal region, feature suggestive of intracerebral hemorrhage in the right temporal region with hair line fracture in the left side of temporal bone and multiple grievous injuries, he would have needed the help of the attender to take care of him and therefore Rs.5,000/- is provided towards "Attender charges". In view of the injury suffered by the petitioner/claimant his normal functioning is affected. As such, it will be appropriate to provide Rs.5,000/- towards "loss of amenities" suffered by him. The amount awarded by the Tribunal towards medical expenses, transport and extra nourishment at Rs.45,000/- and Rs.10,000/- respectively are confirmed.

13. Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Permanent disability	1,00,000.00	1,20,000.00
2	Pain and Suffering	10,000.00	-
3	Medical expenses	45,000.00	45,000.00
4	Extra nourishment and transport expenses	10,000.00	10,000.00
5	Loss of income	-	19,500.00
6	Attender Charges	-	5,000.00
7	Loss of Amenities	-	5,000.00
8	Total	1,65,000.00	2,04,500.00

14. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.2,04,500/- from Rs.1,65,000/-.

(ii) The award amount will carry interest at

the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award amount, the respondent/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the petitioner/claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(v) Petitioner/Claimant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

(vi) In view of the order of this court passed in C.M.P.No.8874 of 2017 in C.M.A.SR.No.41040 of 2017, the petitioner/claimant shall forego interest for the delay period.

No costs.

bri

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
IV Additional District Judge,
Ponneri.

+1cc to Mrs.M.Malar, Advocate Sr.No.31023

KJI (CO)
EU:4.7.2018

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