

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.911 of 2018
and C.M.P.No.7521 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division) Ltd.,
Coimbatore. ..Appellant/2nd Respondent

Versus

1.R.Ramesh ..Respondent/ Petitioner

2.V.Senthil ..Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.07.2017 made in M.C.O.P.No.70 of 2016 on the file of the Motor Accident Claims Tribunal, The Special Subordinate Judge, Erode.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.R.Nalliyappan for Caveate

J U D G M E N T

The Appellant/2nd respondent/Transport Corporation has filed this appeal against the judgment and decree dated 24.07.2017 made in M.C.O.P.No.70 of 2016 on the file of the Motor Accident Claims Tribunal, The Special Subordinate Judge, Erode.

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

3. The case of the petitioner/claimant is that on 20.12.2015 at about 10.30 a.m., while the petitioner/claimant was riding his motorcycle bearing Registration No.TN-37-BC-6379 along with his son Harishkumar as pillion rider, in the Kovai to Siruvani Road, while going near Pateeswaran Koil bus stop, as the petitioner/claimant stopped his vehicle at the traffic junction, the 2nd respondent/Transport Corporation bus bearing

Registration No.TN-38-N-1390 driven by the 1st respondent came at high speed, in the same direction, dashed against the two wheeler in which the petitioner/claimant was proceeding causing him fracture and multiple grievous injuries. The accident occurred only due to negligence of the 1st respondent driver. The petitioner/claimant aged 42 years was running a medical shop and as Proprietor, was earning Rs.30,000/- per month. Due to the injury suffered by him, he is unable to attend to his normal work. Hence, the petitioner/claimant sought for a sum of Rs.5,00,000/- as compensation from the 2nd respondent/Transport Corporation.

4. On the other hand, opposing the claim of the petitioner/claimant, by filing counter, the 2nd respondent/Transport Corporation contends that the accident did not occur in the manner alleged by the petitioner/claimant. The respondent bus was proceeding at normal speed and as the bus came near the Pateeswaran Koil bus stop, Porur, at about 10.25 a.m., the rider of the motorcycle suddenly stopped the vehicle without considering the bus following him and on seeing that the driver of the bus applied sudden break and stopped the bus, but dashed against the rear side of the two wheeler slightly. Consequently, the rider and the pillion rider fell down suffered injuries. It is only due to negligence of the two wheel vehicle rider, the accident occurred. The 2nd respondent/Transport Corporation is not liable to pay any compensation. Thus, the 2nd respondent/Transport Corporation sought for dismissal of the petition.

5. Before the Tribunal, the petitioner/claimant examined himself as P.W.1, the medical expert as P.W.2 and produced documents Exs.P.1 to P.29 to prove his claim. On the side of the respondents, the driver of the bus deposed as R.W.1, but no document was produced. On the basis of the available evidence on record, the Tribunal fixed the negligence on the part of the 1st respondent bus driver alone caused the accident and passed an award for a sum of Rs.3,13,200/- payable by the 2nd respondent/Transport Corporation to the petitioner/claimant. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Transport Corporation has come forward with the present appeal.

6. The learned counsel for the appellant/Transport Corporation contends that the Tribunal wrongly fixed the permanent disability suffered by the petitioner/claimant at 15% and adopted multiplier method, without any basis to calculate the loss of earning capacity of the petitioner/claimant. The quantum of the award is on higher side. Thus, the 2nd respondent/Transport Corporation sought for setting aside the award passed by the Tribunal by allowing the

appeal.

7. Per contra the learned counsel for the petitioner/claimant contends that the petitioner/claimant suffered multiple grievous injuries and partial permanent disability affected his earning capacity. Thus, the Tribunal has awarded a just and fair compensation and the same needs no interference. Thus, the petitioner/claimant sought for dismissal of the appeal.

8. Heard both sides and perused the available materials on record.

9. The appeal has been filed only on the issue of quantum of the award and the appellant has not stated anything about the negligence aspect. The Tribunal, on the basis of P.W.1 oral evidence as well as Ex.P.1 - F.I.R and Ex.P.7 - Charge Sheet filed against the 1st respondent driver and also by considering Ex.P.2 - Observation Mahazar and Ex.P.3 - Rough Sketch of the occurrence spot, found negligence of the 1st respondent alone caused the accident. As the said conclusion of the Tribunal is not challenged in the appeal, the same becomes final.

10.1. The petitioner/claimant states that he was aged 42 years and was running a medical shop in Coimbatore and as its Proprietor, was earning Rs.30,000/- per month. The petitioner/claimant produced the Registration Certificate regarding his business, Sai Medicals as Ex.P.19. It is clear from the same that the license was in force on the date of accident. He also filed income tax returns as Ex.P.17. However, the petitioner has not produced any account books or other business documents to prove his monthly earning from the said business. As such, the Tribunal fixed the monthly income of the petitioner at Rs.6,500/- per month. The same appears to be just and proper.

10.2. The petitioner/claimant stated that he suffered bone fracture and grievous injuries all over his body. The Doctor, who deposed as P.W.2, examined the petitioner/claimant in person and also by taking Ex.P.28 - X-Ray found that the petitioner left hand rotation towards inside was 100 degree instead of 180, due to which the petitioner/claimant finds difficulty in lifting heavy objects and also attending to day to day works. P.W.2 - Doctor also said that due to the surgical treatment there is operation scar on the left hand of the petitioner/claimant and the functioning ability of the left hand is reduced. Thus, the Doctor, who deposed as P.W.2 fixed the disability suffered by the petitioner/claimant at 24% and the disability certificate issued by him is produced as Ex.P.27. It is contended by the petitioner that in the absence of any contra evidence let in by

the respondents, the disability suffered by the petitioner/claimant ought to have been fixed at 24%. However, the Tribunal fixed the disability suffered by the petitioner/claimant as 15% and awarded disability compensation at a rate of Rs.3,000/- per percentage and arrived at compensation of Rs.45,000/- (Rs.3000 x 15% disability = Rs.45,000/-). The learned counsel for the petitioner/claimant relied upon the Rulings reported in 2017 (1) TNMAC 251, [P.Elangovan Vs. S.Murali and others] and 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,], and contended that there is no valid reason for the Tribunal to reduce the permanent disability fixed by the doctor at 24% to 15%.

10.3. Taking into consideration the nature of injury sustained by the Petitioner and disability assessed by the doctor and the ruling relied upon by the learned counsel for the Petitioner, this court is of the view that the evidence of P.W.2/ doctor regarding disability assessed, is not contradicted by any material by the 2nd respondent/Insurance company. Therefore, the Tribunal is not justified in reducing the disability suffered by the petitioner as 15% instead of 24%. As such, the compensation towards disability, is computed as follows:-

Rs.3000/- x 24% disability = Rs.72,000/-.

Thus, the compensation amount for disability is now fixed at Rs.72,000/-.

10.4. The petitioner/claimant, as stated above has suffered multiple injuries and fracture and the same is evidenced in Ex.P.24 - Wound certificate, for which, he has taken treatment as inpatient for the same and it is evidenced by Ex.P.12 - Discharge summary as well as Exs.P.11 and P.13 inpatient bills. The petitioner/claimant having suffered fracture could not have attended to his work at least for 8 months. Hence, the loss of income during treatment and recovery period is calculated as follows:-

Rs.6500/- x 8 months = Rs.52,000/-.

Thus, a sum of Rs.52,000/- is hereby awarded as compensation under the head "loss of income during the period of treatment".

10.5. Due to the injury suffered the petitioner/claimant finds difficulty in using the left hand. Thus, towards loss of amenities a sum of Rs.20,000/- is provided. The petitioner/claimant having taken treatment as inpatient and as he is finding difficulty in using his left hand, he would have needed an attender during treatment period. Hence, towards attender charges Rs.10,000/- is provided. Similarly taking note of the nature of injury suffered and period of treatment undergone by the petitioner the following amount is provided,

towards Pain and Suffering Rs.35,000/-, Transport Rs.10,000/-, Extra nourishment Rs.20,000/- is provided. It is clear from Exs.P.15 and P.22 Medical Bills produced by the petitioner that he has incurred medical expenses of Rs.61,400/-. Hence Rs.6,400/- is provided towards medical expenses and towards future medical expenses Rs.30,000/- is awarded.

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal (in Rs)	Amount awarded by this Court (in Rs)
1	Loss of disability	45,000.00	72,000.00
2	Attender Charges	-	10,000.00
3	Future Medical Expenses	-	30,000.00
4	Pain and Suffering	30,000.00	35,000.00
5	Loss of Amenities	-	20,000.00
6	Transportation	3,000.00	10,000.00
7	Extra nourishment	3,000.00	20,000.00
8	Medical expenses	61,400.00	61,400.00
9	Loss of income	6,500.00	52,000.00
10	Damages of Clothes	500.00	-
11	Loss of earning Power	1,63,800.00	-
12	Total	3,13,200.00	3,10,400.00

12. In the result,

(i) the Civil Miscellaneous Appeal is Partly Allowed;

(ii) the amount awarded by the Tribunal is reduced to Rs.3,10,400/- from Rs.3,13,200/-.

(iii) 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.

(iv) In view of the above reduced award amount, the Appellant/ 2nd 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.

(v) On such deposit, the 1st respondent/petitioner 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.

(vi) Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

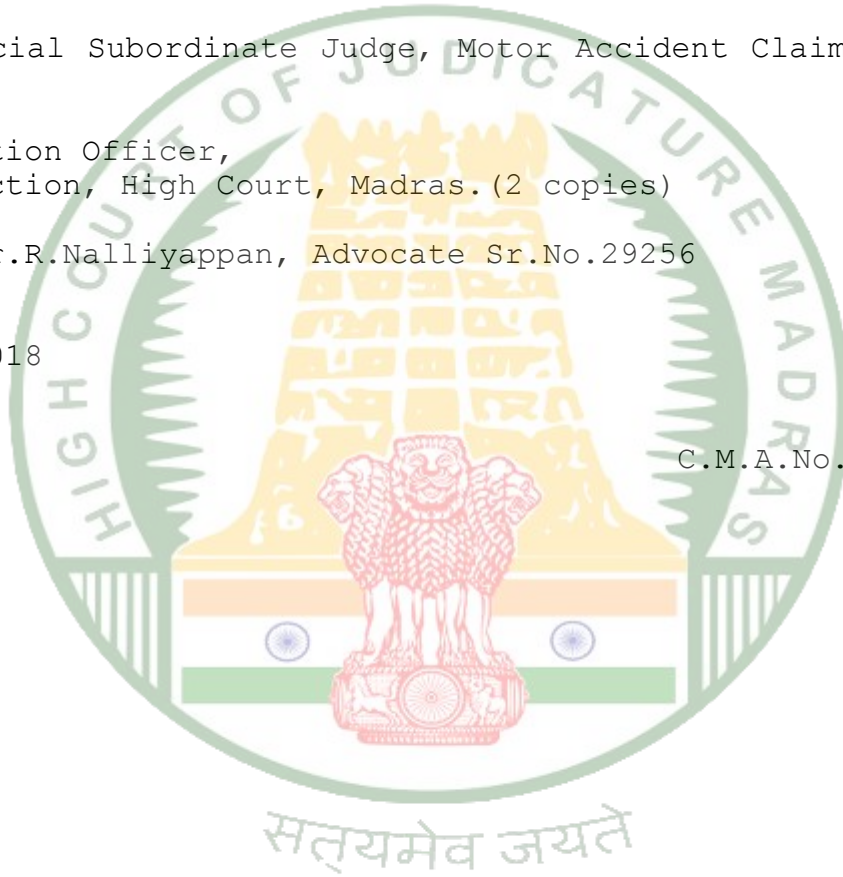
1.The Special Subordinate Judge, Motor Accident Claims Tribunal,
Erode.

2.The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+1cc to Mr.R.Nalliyappan, Advocate Sr.No.29256

SS(CO)
sm:28.6.2018

C.M.A.No.911 of 2018



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