

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.09.2018
Delivered on : 03.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2058 of 2018

***M.G.Pachaiyapphen**

...Appellant/Petitioner

Vs

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam Ltd., Trichy Region,
Trichy

...Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 28.3.2018 passed in M.C.O.P.No.644 of 2013 on the file of the IV Court of Small Causes, MCOP Tribunal, Chennai and enhance the award amount.

For Appellant : Mr.P.Natarajan

For Respondent : Mr.D.Venkatachalam

O R D E R

Being dissatisfied with the quantum of compensation of Rs.2,28,700/- awarded by the Tribunal for the injuries sustained by the appellant in the road traffic accident on ***03/09/2012**, the appellant has preferred this appeal.

2. Brief facts are that on ***03/09/2012**, at 11.30 hours, while the appellant was travelling in the respondent bus bearing registration No.TN-45-N 2912 from Arakkonam to Trichy and when the bus was nearing Thanneer Pandal Joseph School at Perambalur, the driver of the bus drove the same in the rash and negligent manner and endangering public safety and dashed against the tree. As a result, the petitioner and other passengers sustained grievous injuries. Regarding the accident, a criminal

case in Crime No.1120 of 2012 was registered against the driver of the respondent bus by the Perambalur Police Station. In the accident, the appellant sustained fracture left leg, fracture both bone left leg M/3, Collis fracture right hand, right hand dislocation, injury below left eye, scar on chin, facial injury and multiple injuries all over the body. Immediately after the accident, the appellant was admitted in Government Headquarters Hospital, Perambalur, where from he was taken to Kumaran Hospitals (P) Limited, Kilapuk, Chennai and had taken treatment till 08.09.2012 and thereafter, he was taking treatment as outpatient. At the time of accident, the appellant was aged 57 years and was earning Rs.56,778/- per month by working as Deputy Registrar, Lok Adalat/Mediation and Conciliation Centre, Madurai Bench of Madras High Court, Madurai. Stating that the accident occurred due to rash and negligent driving of the driver of the respondent bus, the appellant has filed the claim petition claiming compensation of Rs.10.00 lakhs.

3. Despite service, the respondent remained ex parte.

4. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Mathiazhagan was examined as P.W.2 and marked Exs.P1 to P19.

5. Upon consideration of the oral and documentary evidence, the Tribunal awarded total compensation of Rs.2,28,700/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Not satisfied with the total compensation awarded by the Tribunal, the appellant has preferred the present Civil Miscellaneous Appeal.

6. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the claimants and secondly, none of those findings are under challenge. As against the award passed, no appeal has been preferred by the respondent. Hence, only the quantum of compensation is in issue in this appeal.

7. The learned counsel for the appellant submitted that the Tribunal erred in taking the disability at 30% while the Doctor who treated the appellant has issued disability certificate assessing the disability at 55%. Hence, the Tribunal ought to have awarded Rs.1,65,000/- instead of Rs.90,000/- on the head of disability. He would submit that as far as other heads are concerned, the Tribunal erred in awarding meagre amount and the same needs to be enhanced. The learned counsel further submitted that the Tribunal has failed to award compensation towards loss of future earnings by adopting multiplier theory as

the petitioner had sustained injury which may affect the future development in earnings of the petitioner. Hence, the learned counsel prayed for enhancement of compensation to Rs.5.00 lakhs.

8. Per contra, the learned counsel for the respondent submitted that in this case loss of future earning would not arise as no material has been produced by the petitioner to show that his future earnings was affected because of injuries. He would submit that upon appreciation of oral and documentary evidence, the Tribunal awarded the compensation and there is no need to interfere with the award.

9. The point that arises for consideration is whether the compensation of Rs.2,28,700/- awarded by the Tribunal needs to be enhanced.

10. In the accident, the appellant had sustained the following injuries - (i) fracture left leg; (ii) fracture both bones left leg M/3; (iii) collis fracture right hand; (iv) right hand dislocation; (v) injury below left eye; (vi) facial injury. According to the appellant, he had also sustained multiple injuries all over the body. To prove the injuries sustained in the accident, the appellant has produced Ex.P5-discharge summary. On a perusal of Ex.P5-discharge summary, the appellant had taken treatment at Kumaran Hospitals (P) Limited, Kilpauk, Chennai from 3.9.2012 till 8.9.2012 and thereafter, the appellant had taken treatment as out-patient.

11. In his evidence, the appellant(P.W.1) deposed that due to injuries, he was unable to do his normal avocation and he often feeling pain all over the body and also it was difficult to walk and stand even for a short distance.

12. P.W.2-Dr.Mathiazhagan, examined the appellant and had issued Ex.P19-disability certificate assessing the disability at 55%. Before assessing the disability, P.W.2 had taken X-ray and the same was marked as Ex.P18. While awarding compensation under the head disability, the Tribunal held that P.W.2 is not the doctor who treated the petitioner and also failed to produce the guidelines to show as to how he arrived the percentage of disability. The Tribunal erred in saying so in its order for the reason, on a perusal of Ex.P19-disability certificate, it has been stated by P.W.2-Doctor that he had examined the appellant and then issued Ex.P19-disability certificate. In Ex.P19-disability certificate, P.W.2-Doctor noted the following disabilities:

- (i) Pain and stiffness right wrist and left leg with knee joint.
- (ii) Movements restricted. Knee flexion 0 to 90° only (normal 135°)

- (iii) Wrist flexion 0 to 30° only (normal 90°)
- (iv) Difficulty in walking/climbing steps/sitting cross legged/squatting.
- (v) Difficulty in lifting or holding heavy objects of more than 5 kgs., by right arm.

Apart from the above said injuries, in Ex.P19-disability certificate, P.W.2-Doctor noted the X-ray findings and stated that mal united fractures. From the evidence of P.Ws.1 and 2 and also Exs.P18 and P19-disability certificate and the X-ray, it is clear that in the accident the appellant had sustained multiple fractures and also injuries all over the body. The Tribunal erred in taking the disability at 30%, instead 55% as the disability certificate issued by P.W.2 has not been questioned by the respondent. Following the decision of the Apex Court in National Insurance Company Ltd. v. G.Ramesh, reported in 2013 (2) TN MAC 583, this Court has taken Rs.3,000/- per percentage of disability and thus, compensation of Rs.90,000/- awarded by the Tribunal is enhanced to Rs.1,65,000/- towards disability.

13. In the claim petition, the appellant had claimed Rs.30,000/- towards transport charges and Rs.20,000/- towards extra-nourishment. The Tribunal has awarded Rs.20,000/- for transport charges and extra-nourishment. Immediately after the accident, the appellant was taken to the Government Hospital, Perambalur where from he was taken to the Kumaran Hospitals, Chennai and had taken treatment from 03.9.2012 to 08.9.2012. Considering the nature of injuries and the treatment undergone by the appellant in a private hospital at Chennai, Rs.20,000/- awarded by the Tribunal towards transportation, extra-nourishment and miscellaneous expenditure is enhanced to Rs.50,000/-.

14. The Tribunal has awarded to Rs.3,000/- towards attender charges. Considering the period of treatment and also the fact that the appellant would have been taken care of by the attender during the period of treatment, a sum of Rs.3,000/- awarded by the Tribunal is enhanced to Rs.15,000/-.

15. The appellant has claimed Rs.50,000/- towards medical expenses. The appellant has produced Ex.P7-bills to the tune of Rs.35,692/- and the Tribunal has awarded the said amount towards medical expenses. Considering the nature of injuries and the expenses incurred by the appellants towards medical expenses, Rs.35,692/- awarded by the Tribunal is maintained.

16. In the claim petition, the appellant had claimed Rs.2,40,000/- towards loss of earning power. At the time of accident the appellant was working as Deputy Registrar of Madurai Bench of Madras High Court and was earning a sum of

Rs.56,778/- per month. Ex.P12 is the salary certificate. According to the petitioner, because of the injuries, his personal carrier was reduced to the maximum extent. Though the appellant has failed to produce documents to show that he lost his earning power or sustained any loss of income for certain period, taking note of the injuries sustained by him in the accident and also the percentage of disability, it would be appropriate to award a sum of Rs.2,00,000/- towards loss of earning power.

17. The petitioner has claimed Rs.80,000/- towards pain and suffering. The Tribunal has awarded Rs.50,000/- towards pain and suffering. Considering the nature of injuries and the treatment undergone by the appellant, a sum of Rs.50,000/- awarded by the Tribunal towards pain and suffering is enhanced to Rs.1,00,000/-.

18. The appellant has claimed Rs.50,000/- towards loss of amenities. The Tribunal awarded Rs.30,000/- towards loss of amenities. Loss of amenities covers the deprivation of ordinary experiences and enjoyment of life. In the case on hand, the appellant has stated that due to the accident, he could not able to do any usual activities. Therefore, a sum of Rs.30,000/- awarded by the Tribunal towards loss of amenities is enhanced to Rs.50,000/-.

19. In his claim petition, the appellant has claimed Rs.50,000/- towards loss of expectation of life, hardship and mental stress. The Tribunal has not awarded any amount towards the aforesaid heads. Considering the nature of injuries and the period of treatment undergone by the appellant and also the post held by the appellant at the time of accident, he would have sustained mental stress. Therefore, a sum of Rs.70,000/- is awarded towards loss of mental stress and hardship caused due to the accident. Thus, the total compensation of Rs.2,28,700/- awarded by the Tribunal is enhanced as under:

Heads	Rs.
Disability	1,65,000.00
Transport charges	50,000.00
Extra-nourishment	10,000.00
Attender charges	15,000.00
Medical expenses	35,692.00
Loss of earning power	2,00,000.00
Pain ans suffering	1,00,000.00
Loss of amenities	50,000.00

Heads	Rs.
Loss of mental stress and hardship	70,000.00
Total	6,95,692.00
Rounded off	6,95,700.00

The Tribunal has awarded interest at the rate of 7.5% per annum from the date of petition till the date of deposit and the same is maintained.

20. In the result, the Civil Miscellaneous Appeal is allowed. The compensation of Rs.2,28,700/- awarded by the Tribunal in favour the appellant in M.C.O.P.No.644 of 2013 on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai is enhanced to Rs.6,95,700/-. The respondent is directed to deposit the award amount of Rs.6,95,700/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant is at liberty to withdraw ***entire award amount with interest at 7.5% per annum on filing appropriate application before the Tribunal and the Tribunal is directed to consider the same.** No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

Dated:17/12/2018

*Corrected as per order dated 21/12/2018 made in

CMP No.23429/18

in CMA No.2058/18

Sd/-

Assistant Registrar(CS-IV)

Dated:23/01/2019

//True Copy//

Sub Assistant Registrar

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To

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

To be substituted the
order already
despatched on
19/12/2018

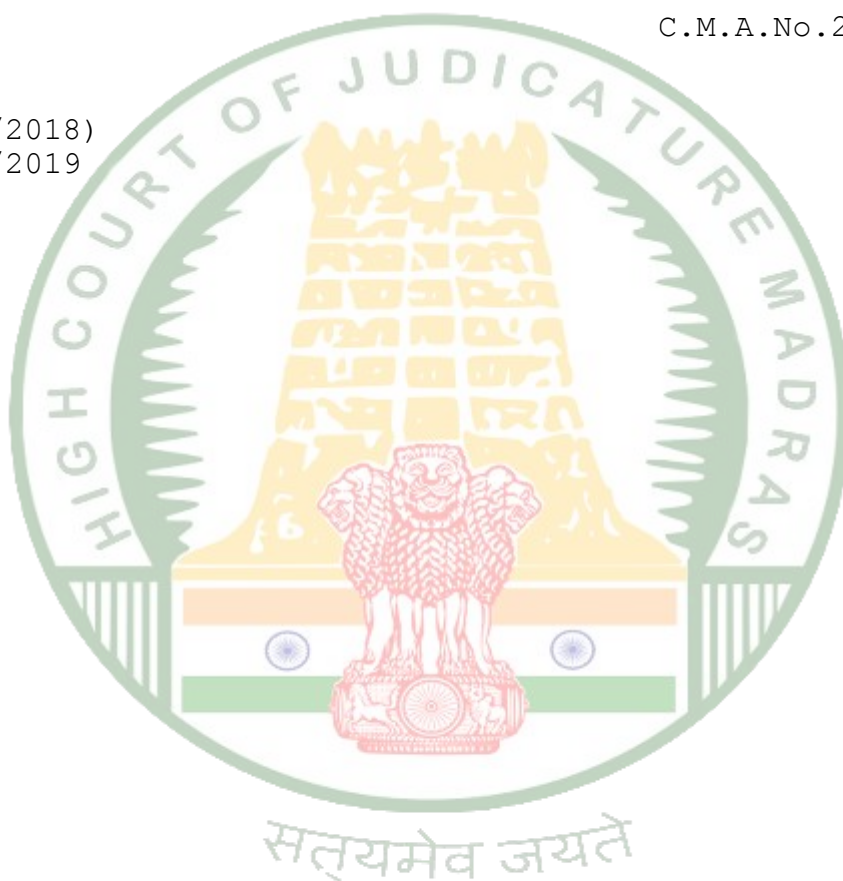
Copy to:
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.D.Venkatachalam, Advocate, **S.R.No.*89239**

+2cc to Mr.P.Natarajan, Advocate, **S.R.No.*89372**

C.M.A.No.2058 of 2018

RK(CO)
GSP(17/12/2018)
srg 25/01/2019



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