

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :24.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.1438 of 2006

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Chennai. ... Appellant/Respondent

Versus

C.Govindaraju ... Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the award and Decreetal order dated 24.09.2003 made in M.C.O.P.No.4590 of 1998 on the file of the Motor Accident Claims Tribunal, (V Judge, Small Causes Court) Chennai.

For Appellant : Mr.S.V.Vasanthakumar
For Mrs.P.J.Saleem Fathima
For Respondent : Mr.G.Perumal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and Decreetal order dated 24.09.2003 made in M.C.O.P.No.4590 of 1998 on the file of the Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

2. The brief facts of the case leading to the claim application are as follows :

On 04.09.1998, at about 11.00 p.m, when the petitioner and his co-worker were driving the tricycle slowly on the left side of the road, at that time, the bus bearing Registration No.TN 01 N 2815 came in a rash and negligent manner by overtaking a lorry hit against the tricycle and the petitioner sustained injury on the left side which is a smash injury and subsequently upto his shoulder, his hand was amputated. Hence, the petitioner claimed a sum of Rs.3,00,000/- as compensation.

3. The respondent in the counter statement has denied the rash and negligent driving on the part of the driver of the lorry and fixed the liability on the petitioner, who had driven the tricycle from the opposite direction and suddenly turned his tricycle to his right, without adhering other vehicles moving in the road. The other aspect regarding the sum claimed by the claimant has been stated as highly excessive and exorbitant.

4. The Tribunal, after analyzing the evidence and documents placed before it, had fixed the liability on the driver of the bus and awarded compensation of Rs.2,88,000/- to the claimant. Aggrieved against the said order, the Transport Corporation has preferred this appeal.

5. In the grounds of appeal, it has been stated that the Tribunal ought to have fixed the entire contributory negligence on the part of the claimant, since it is negligent act on the part of the driver of the tricycle who invited the accident. The disability that has been stated by the claimant has also not been properly considered and without examining the author of the document, the Tribunal has awarded huge sum. The other aspect stated in the grounds of appeal is that the income, occupation of the claimant have also not been properly considered in the absence of relevant documents and evidence. Hence, the total sum determined by the Tribunal various heads at Rs.2,88,000/- is very much excessive and unimaginary.

6. Heard both sides. Perused the documents available on record.

7. The learned counsel for the appellant/Transport Corporation has argued that the Tribunal has not considered the evidence and documents in a proper manner. The Tribunal has considered the evidence of PW2, who assessed the disability and issued certificate but not the person who really treated the claimant. It is argued by the respondent/claimant that the claimant has sustained injury which has been clearly stated in the discharge summary. It is observed that the petitioner has sustained injury on his left hand and the left hand was amputated upto his forearm and the disability was assessed by the Doctor at 70% and Ex.P5 is the disability certificate, which was produced before the Tribunal. The occupation of the claimant has also been stated that he was doing coconut loading and unloading work in a lorry and his age has also been stated as 27 years. The injury sustained by the claimant and the nature of occupation and also the age of the petitioner is very much to be considered. The Tribunal has fixed the disability at 70% by considering the fact that the claimant has lost his left hand and amputated upto his forearm. Hence, definitely it

affects the future earning capacity of the claimant. Therefore, even in the absence of documents the Tribunal by taking into consideration the oral evidence, occupation and income has rightly determined the compensation under various heads as follows:

For disability	: Rs.2,70,000.00
For Loss of Income	: Rs. 5,000.00
For Transport Expenses	: Rs. 500.00
For Nourishment	: Rs. 500.00
For Pain and Sufferings	: Rs. 5,000.00
For Mental agony	: Rs. 2,000.00
For future earnings	: Rs. 5,000.00

Rs.2,88,000.00

8. On perusal of the evidence, the Tribunal by assessing the loss of income from 04.09.1998 i.e. from the date of accident, has fixed a sum of Rs.5000/- for loss of income. Even for the transport and nourishment, the sum awarded by the Tribunal is very much reasonable and it is not on the higher side. The sum awarded for pain and sufferings at Rs.5000/- is also not on the higher side. The future loss of income has been assessed at Rs.5000/- is also very much meager. Hence, on the whole, the sum arrived by the Tribunal by taking into consideration of the disability, age and occupation of the claimant is very much reasonable and there is no basis on the argument of the appellant that the sum awarded by the Tribunal is excessive. In view of the above, this Court comes to a conclusion that the compensation awarded by the Tribunal under various heads is quite proper and reasonable and finds no merit in this appeal and does not require interference.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

10. Accordingly, the appellant/ Transport Corporation is directed to deposit the entire award amount by the Tribunal, with interest and costs, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

2.The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to Mr.S.V.Vasanthakumar, Advocate sr.no.72858

C.M.A. No.1438 of 2006

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