

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3349 of 2009

S.Raja

... Appellant (Petitioner)

Vs

Metropolitan Transport Corporation Ltd.,
represented by its Managing Director,
Pallavan Salai, Chennai 600 002. ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Vehicles Accidents Claims Tribunal, V Court of Small Causes Court, Chennai in MCOP.No.941 of 2002 dated 8.1.2007.

For Appellant : Mr.C. Senthil Nathan

For Respondent : Mr S.S.Swaminathan

JUDGMENT

The instant appeal has been filed by the claimant challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Court of Small Causes, Chennai, in its Award dated 8.1.2007 in MCOP.No.941 of 2002.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) The appellant sustained injuries as a result of an accident caused by a bus bearing Registration TN-01-N-3432 owned by the respondent transport corporation on 07.2.2000. As a result of the accident, the appellant sustained a fracture of left femur. The appellant preferred a claim before the Motor Accidents Claims Tribunal in MCOP.No.941 of 2012 seeking a compensation of Rs.1,50,000/- against the respondent.

(ii) The Motor accident Claims Tribunal, by its award dated 8.1.2007 in MCOP.No.941 of 2002 directed the respondent transport corporation to pay the appellant a sum of Rs.25,000/- together with interest at 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved with the quantum of compensation awarded by the tribunal, the instant appeal has been filed by the claimant.

3. Heard Mr.C.Senthil Nathan, learned counsel for the appellant and Mr.S.S.Swaminathan for 2nd respondent.

4. Learned counsel for the appellant submits that the quantum of compensation awarded by the tribunal is low and not commensurate with the actual loss suffered by the appellant due to the injuries sustained by him, as a result of the accident. The appellant had made a claim before the Motor Accident Claims Tribunal under Section 163-A of the Motor Vehicles Act . Therefore, there is no necessity to prove negligence.

5. According to the learned counsel for the appellant, the appellant was a Marketing Executive at the time of the accident and the tribunal has erroneously rejected the claim of the appellant that he was earning a monthly salary of Rs.3,800/- at the time of accident since he did not produce any document to prove that he was earning a monthly salary of Rs.3,800/-.

6. According to learned counsel for the appellant, no contra evidence was produced by the respondent transport corporation to disprove the claim of the appellant that he was a Marketing Executive and that he was earning a monthly salary of Rs.3,800/-. According to him, notional income ought to have been assessed by the tribunal. He would further contend that the nature of injuries sustained by the appellant as a result of the accident is not disputed by the respondent transport corporation. In such circumstances, according to learned counsel for the appellant, the tribunal ought to have allowed the claim of the appellant in toto as claimed in the claim petition.

7. Per contra, learned counsel for the respondent transport corporation would submit that the tribunal has rightly awarded a just compensation to the appellant considering the fact that no documentary evidence was placed by the appellant before the tribunal to establish that he was earning a monthly salary of Rs.3,800/-. Having made a claim under section 163 A of the Motor Vehicles Act, the tribunal has rightly awarded a compensation of Rs.25,000/- in favour of the appellant.

8. This Court, after having considered the materials available on record and after having examined the impugned award and after hearing the submissions of the respective counsels observes the following;

a. The nature of injuries sustained by the appellant as a result of the accident is also not disputed by the respondent transport corporation before the tribunal.

b. The appellant had made a claim of Rs.1,50,000/- under Section 163 A of the Motor Vehicles Act, whereas the Tribunal has awarded only a sum of Rs.25,000/- under the impugned Award.

c. Since the appellant did not produce any documentary evidence to prove his monthly income, the tribunal ought to have assessed the monthly income of the appellant on notional basis, instead of that, the tribunal has erroneously rejected the claim of the appellant under section 163A of the Motor Vehicles Act on the ground that in his claim petition he claimed his monthly income as Rs.3,800/- which exceeds the limit of Rs.40,000/- under Section 163 A of the Motor Vehicles Act. The tribunal ought not to have rejected the claim under section 163-A of the Act.

9. The accident happened in the year 2000. The notional income for the year 2002 applicable and assessed by the Courts is Rs.3000/- per month. If the notional income is assessed at Rs.3000/- per month, annual income will be less than Rs.40,000/- and therefore the claim under Section 163A of the Motor Vehicles Act of the appellant is maintainable. This Court is of the considered view that the tribunal ought to have assessed the monthly income at Rs.3000/- and ought not to have treated the claim of the appellant under section 166 of the Motor Vehicles Act even though the claim was made only under Section 163A of the Motor Vehicles Act.

10. Since the appellant has sustained fracture of the left femur and was a Marketing Executive and was aged 23 years at the time of the accident, a just compensation ought to have been awarded by the tribunal which was not done in the instant case. The appellant before the tribunal has filed 11 documents which were marked as Ex.P.1 to P.11 and has examined two witnesses namely the appellant himself and the Doctor. The documents which were marked as exhibits included discharge summary, medical bills, disability certificate, and bills towards medical expenses.

11.The tribunal has not considered all these documents while passing the impugned award. This court is of the considered view that adequate and just compensation will have to be awarded to the appellant for the injuries sustained by him as a result of the accident caused by the bus owned by the respondent transport corporation.

12.In the light of the above observations, this Court is of the considered view that the compensation awarded under the impugned award has to be enhanced in favour of the appellant in the following manner;

Sl. No.	Head	Amount Awarded by this Court
1	Medical Bills	Rs. 5,000/-
2	Pain and suffering	Rs.15,000/-
3	Nourishment	Rs. 1000/-
4	Attendant charges	Rs. 2,000/-
5.	Loss of amenities	Rs.15,000/-
6.	Transport expenses	Rs. 1,000/-
7	Permanent Disability at 40%	Rs.80,000 /-
8	Loss of Income for 2 months	Rs. 6000/-
	Total	Rs.1,15,000/-

13. In the result,

(i) The appeal is partly allowed No costs. The Award passed by the tribunal is hereby modified by enhancing the compensation to Rs.1,15,000/- instead of Rs.25,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. No costs.

(ii) The Respondent transport corporation is directed to deposit the enhanced compensation awarded by this Court, along with accrued interest thereon to the credit of MCOP.No.941 of 2002, after adjusting the amount, if any, already deposited and on such deposit being made, the appellant is permitted to withdraw the same on filing an appropriate application before the tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msr
To

The Motor Vehicles Accidents Claims Tribunal,
V Court of Small Causes Court,
Chennai.

+1cc to Mr.C.Senthilnathan, Advocate Sr.61480
+1cc to Mr.S.S.Swaminathan, Advocate Sr.61474

C.M.A.No.3349 of 2009

nm[co]
srg 11/10/2018

WEB COPY