

IN THE HIGH COURT OF JUDICATURE AT MADRAS

17.09.2018

CORAM

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

CMA No.355 of 2007

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Div. II, Erode. Appellant/Respondent

Versus

Meyyappan Respondent/Petitioner

Prayer:

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the award and decretal order passed by the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, No.V, Coimbatore at Tiruppur and made in MACTOP No.1017 of 2004, dated 03.02.2006.

For Petitioner : Mr.S.V. Vasanthakumar

For Respondent : Ms.R.A. Srividhya

JUDGMENT

This Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the award and decretal order passed by the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, No.V, Coimbatore at Tiruppur and made in MACTOP No.1017 of 2004, dated 03.02.2006.

2. The brief facts of the claim petition are as follows :-

The claimant / the respondent, who was employed as Oil seller was earning a sum of Rs.4,000/- p.m. On 15.10.2004 at about 9.45 p.m., when he was travelling in a Mini Auto bearing Registration No.TN 38 M 2043 from north to south in the Tiruppur to Avinashi road, the transport corporation bus which came in the opposite direction, driven in a rash and negligent manner hit the Mini Auto in which the claimant was travelling. Due to which, the claimant sustained grievous injuries all over the body and underwent treatment for about a month. The claimant

sustained fractures in the left hand and left shoulder. Hence, he claimed a sum of Rs.5,00,000/- as compensation for the injuries sustained in the accident.

3. The Tribunal on consideration of materials placed before it, awarded a sum of Rs.1,80,820/- and the breakup details are as under:-

Loss of income (Rs.2100/- x 12 x 15 x 34%)	:	Rs.1,28,520.00
Transportation	:	250.00
Nutrition	:	1,000.00
Mental agony and pain and sufferings	:	6,000.00
Medical expenses	:	45,049.00

		1,80,820.00

4. Challenging the award as excessive, the transport corporation / appellant herein has filed this appeal.

5. The learned counsel for the appellant argued that the Tribunal erred in concluding that the accident took place only due to the rash and negligent driving of the driver of the Corporation bus. Further it is argued that the Tribunal erred in relying upon the evidence of PW1, the claimant in respect of the manner of the accident, nature of injury, period of treatment, disability and occupation and also erred in relying upon the Exs.P2 to P4 treatment records, which were marked without examining the author of the documents. which relates to treatment records have not been done. Hence, on the whole, the appellant is very much aggrieved over the award of Rs.1,80,820/- passed by the Tribunal.

6. Heard both sides and perused the documents available on record.

7. On a perusal of the records, it is seen that after the accident, a criminal case was registered against the appellant corporation as per, Ex.P1, the FIR. The evidence of PW1 and Ex.P1 were very much considered by the Tribunal and concluded that the accident occurred only due to the negligent driving of the driver of the Transport Corporation bus, though the appellant herein mentioned in the grounds of appeal, disputing the negligence on the part of the claimant, on a perusal of records, it is also observed that the occupation of the claimant was mentioned as oil seller and thereby he was earning Rs.4,000/- p.m. But the Tribunal has taken the monthly income as Rs.2,100/- which is quite reasonable. The wound certificate also proves that the claimant sustained fracture injury and he has also sustained two other injuries. Ex. P4, the Discharge summary, clearly reveals, the period of treatment undergone by the claimant and the treatment underwent by him. The medical expenses incurred by the claimant has also been considered by the Tribunal in a proper manner. The disability sustained by the claimant was revealed in Ex. P6, Disability certificate

issued by the Doctor as 39.5%. and the Tribunal has fixed the disability as 34%.

8. On hearing both sides and also considering the nature of injury sustained by the claimant / respondent herein and the age , it would be quite appropriate in awarding a sum for the disability by fixing at Rs.2,000/- per percentage and this Court has considered the injuries and fracture sustained by the claimant and decided to fix the disability at 39.5% as per Ex.P6 and accordingly, the percentage of disability is determined by this Court at 39.5% (Rs.2000/- x 39.5 = Rs.79,000/-). Considering the nature of injuries and the fact that the respondent suffered acute pain and suffering, the amount awarded towards pain and suffering is required to be enhanced, accordingly the sum awarded under the head pain and sufferings is enhanced from Rs.6,000/- to Rs.20,000/ -. Taking note of the period of hospitalisation of the claimant, this Court is of the view that the Tribunal ought to have awarded attendant charges as well as loss of amenities in favour of the respondent, but no amount was awarded towards the same. Hence, this Court hereby awards a sum of Rs.10,000/- towards attendant charges and another sum of Rs.5,000/- towards loss of amenities. Similarly, the transportation expenses awarded by the Tribunal at Rs.250/- is inadequate and it is hereby enhanced to Rs.5,000/- Likewise loss of income during the period of hospitalisation has not been considered, hence a sum of Rs.8,000/- is now awarded. An amount of Rs.1,000/- under the head nourishment seems to be meagre hence, the same is enhanced to Rs.5,000/- Amount awarded for medical expenses is now rounded off to Rs.45,050/-.

9. Accordingly, this Court modifies the award amount as follows :Thus, this Court is inclined to modify the award amount and the details of which are given hereunder :-

	Amount awarded by the Tribunal	Amount awarded by this Court
Functional disability	Rs.1,28,520/-	Rs.79,000/-
Transport	250/-	5,000/-
Nourishment	1,000/-	5,000/-
Pain and sufferings	6,000/-	20,000/-
Medical expenses	45,049.50	45,050/-

	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Income during the period of hospitalisation	-	8,000/-
Attendant charges	-	50,000/-
Loss of amenities	-	10,000/-
Total	1,80,819.50	1,77,050/-

10. Accordingly, the Transport Corporation/appellant herein is directed to deposit the entire amount of compensation, as awarded by this Court, less the amount, if any, already deposited, along with interest @ 7.5% from the date of petition till the date of deposit to the credit of MCOP No.1017 of 2004 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant/respondent, through RTGS, within a period of two weeks thereafter.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge, Fast Track Court, No.V, Coimbatore.

+1cc to Ms.R.A. Srividhya, Advocate sr.no.64269
+1cc to Mr.S.V.Vasanthakumar, Advocate sr.no.64042

CMA No.355 of 2007

gj (co)
nr 24/01/2019