

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1593 of 2006

A.Venkatesh @ Venkatesan

... Appellant/Petitioner

Vs

1.M/s.Jaikrishna Bus Service,
16, Gandhi Nagar,
Erode-9.

2.The New India Assurance Co.Ltd.,
rep.by its Branch Manager,
11, Amman Complex, 1st Street,
169-A, E.V.N.Road,
Erode-11.

3.The Managing Director,
Tamil Nadu State Transport Corporation Limited
(Salem Division-I) Ltd.,
12, Ramakrishna Road,
Salem-637 007.

(Respondents 1 and 2 given up in this CMA).

... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.06.2005 made in MCOP No.875 of 2002 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Namakkal (MCOP No.134 of 2000 Sub-Court, Sankari transferred to Sub-Court, Namakkal).

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For Appellant : Mr.N.Manokaran

For Respondent : Mr.D.Venkatachalam for R3

RR1 & 2 : Given up

JUDGMENT

The case in brief, is as follows:

On 25.02.2000 at about 02.50 p.m., the appellant was travelling from Cauvery R.S.to Pallipalayam in the bus belonging to the first respondent and insured with the second respondent Insurance Company, bearing Reg.No.TN-33-K-9352 in the Pallipalayam to Paper Mill Road. When the bus was nearing Kannanoor Mariamman Temple, another bus bearing Reg.No.TN-27-N-1037 belonging to the third respondent Transport Corporation came from the opposite direction in a rash and negligent manner and dashed against the bus bearing Reg.No.TN-33-K-9352. Due to the said impact, the appellant and the passengers who were travelling in the bus bearing Reg.No.TN-33-K-9352 sustained injuries. The appellant filed a claim petition before the Tribunal claiming a sum of Rs.2,00,000/- as total compensation. Considering the materials and evidence available on record, the Tribunal awarded a sum of Rs.55,018.10 with interest at the rate of 7.5% per annum from the date of petition, as total compensation.

2.Challenging the same, the appellant -claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

3.The learned counsel for the appellant /claimant has submitted that the Tribunal has awarded a meagre compensation of Rs.50,000/- towards pain and suffering and loss of earning and a sum of Rs.5,018.10 towards medical expenses, without taking note of the claims made by the appellant under other heads. Stating so, the learned counsel prayed for enhancement of compensation.

4.The learned counsel for the third respondent Transport Corporation has submitted that the Tribunal has correctly considered the materials and evidence available on record and has correctly awarded the compensation, which is just, fair and reasonable and hence the judgment of the Tribunal does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant / claimant and the learned counsel for the third respondent Transport Corporation and perused the materials available on record carefully and meticulously.

6.The Tribunal has awarded a sum of Rs.5,018.10 towards medical expenses, based upon Ex.P6-Medical Bills. The Tribunal has also awarded a consolidated sum of Rs.50,000/- towards pain and suffering and loss of earning. The amount of Rs.50,000/-

awarded towards pain and suffering and loss of earning shall be taken as the amount awarded only towards pain and suffering and a separate sum of Rs.10,000/- is now awarded towards loss of earning. It is seen that due to the accident, the appellant suffered fracture on his left humerus and a fracture in the left forearm, leading to 3 pieces. It is also seen that the appellant underwent many surgeries. Steel plates and screws were fixed for the fractures. Hence, certainly the appellant would have incurred expenditure towards medical expenses for removal of plates and other related aspects. Hence, it would be appropriate to award a sum of Rs.40,000/- towards future medical expenses. In respect of the disability, P.W.2-Doctor determined the disability of the claimant at 38% for which no amount has been awarded. It would be appropriate to award a sum of Rs.57,000/- towards disability at the rate of Rs.1,500/- per percentage of disability. Because of the injuries, it is seen that the appellant is unable to perform his work as before. In this connection, awarding a sum of Rs.38,000/- towards loss of amenities would meet the ends of justice. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Pain and suffering	50,000/-
Medical expenses	5,018/-
Loss of earning	10,000/-
Future medical expenses	40,000/-
Permanent disability	57,000/-
Loss of amenities	38,000/-
TOTAL...	2,00,018/-
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Thus, the appellant / claimant is entitled to the modified compensation of Rs.2,00,018/-, rounded off to Rs.2,00,000/-.

7.It is made clear that only for the compensation of Rs.55,000/-, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.1,45,000/-, the interest rate of 7.5% per annum shall be calculated from the date of filing of this appeal.

8.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

9.The third respondent Transport Corporation is directed to deposit the modified compensation as ordered above, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal /
Chief Judicial Magistrate, Namakkal.

2.The Section Officer,
VR Section,
Madras High Court.

+lcc to Mr.N.Manokaran, Advocate sr.72948

+lcc to Mr.D.Venkatachalam, Advocate Sr.72839

सत्यमेव जयते C.M.A.No.1593 of 2006

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srg 21/10/2019

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