

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

C.M.A. No.1689 of 2006

Joseph ...Appellant/Claimant

vs.

1.Duraisamy

2.Tamil Nadu State Transport Corporation

(Coimbatore Division II) Ltd.,

Chennimalai Road,

Erode District.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgement and Decree dated 23.09.2005 made in M.C.O.P.No.1142 of 2002 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Erode.

For Appellant : Mr.N.Manoharan

For Respondents : Mr.K.J.Sivakumar for R2

J U D G M E N T

This Appeal has been preferred by the appellant/claimant as against the award passed by the Motor Accidents Claims Tribunal, Principal Sub Court, Erode in MCOP.No.1142 of 2002 dated 23.09.2005.

2.The brief facts of the case are as follows:

On 24.01.2002 at about 8.30 p.m., the appellant / claimant was travelling as a passenger in the bus bearing Registration No.TN-33-N-1249 belonging to the appellant Transport Corporation from Nanjai Uthukuli - Kalliamputur. Near Kalliamputur Pirivu bus stop, the conductor whistled to stop the bus and the bus was also stopped. Thereafter, when the appellant / claimant was getting into the bus, the driver moved the bus suddenly without any whistle from the conductor, in a rash and negligent manner. Due to the impact, the appellant, who was on the footsteps of the bus, fell down from the bus and sustained fractures on the left hand, left knee and injuries on the left leg. Claiming that the accident had occurred due to the rash and negligent driving of the driver of the Transport Corporation bus, the claimant / appellant filed a claim petition before the Tribunal, claiming a compensation of Rs.5,00,000/-. Considering the materials and

evidence available on record, the Tribunal has awarded a total compensation of Rs.69,000/- with interest at the rate of 7.5% per annum from the date of petition. The details of the compensation are as follows:

Sl. No.	Heads	Amount (Rs.)
1	Medical expenses	27,500
2	Transportation expenses	1,500
3	Extra nourishment	3,000
4	Pain and suffering & Loss of earning capacity	30,000
5	Future medical expenses	7,000
	TOTAL....	69,000

3.Challenging the same, the appellant has come up with the present appeal for enhancement of compensation.

4.The learned counsel for the appellant / claimant has submitted that the Tribunal has erred in awarding lesser compensation for the injuries sustained by the claimant, when the disability was assessed by the Doctor at 35%. It is also submitted that the Tribunal has not awarded any sum towards attender charges and damage to clothes / articles. In all, it is submitted that the amounts awarded towards various heads are meagre and the same requires enhancement.

5.Per contra, the learned counsel for the second respondent/Transport Corporation has submitted that the Tribunal has correctly considered the materials and evidence available on record and has awarded the compensation, which is just and reasonable and hence the compensation awarded by the Tribunal does not require any interference in the hands of this Court.

6.Heard both sides and perused the records.

7.An analysis of the award of the Tribunal would disclose the fact that the Doctor was examined to speak about the disability suffered by the claimant. It is not in dispute that the claimant was aged 62 and at that age, the disability, which was assessed by the Doctor at 35%, speaks volumes. The Doctor has spoken about disability suffered in the following lines:-

- (i)Fracture on left knee and implant has been fixed.
- (ii)Surgery has been performed on his left leg.
- (iii)There are chances for future medical expenses to be incurred.

8. The Doctor has also given Ex.P12-Disability Certificate. There is also Ex.P5 wound certificate to support the claim of the claimant. Based on those counts, the Tribunal has awarded a sum of Rs.30,000/- towards pain and suffering & loss of earning capacity, Rs.7,000/- towards future medical expenses, Rs.3,000/- towards extra nourishment, Rs.1,500/- towards transportation expenses and Rs.27,500/- (Ex.P7-Series) towards medical expenses. The Tribunal has not awarded any separate amount towards pain and suffering. It has awarded a sum of Rs.30,000/- for both pain and suffering and loss of earning capacity, which in the considered opinion of this Court, is not correct. It is general knowledge that the disability at 35% would be more, especially when the age of the claimant was 62 during the time of accident and the sufferings would have been more. Hence, viewing from that angle, the Tribunal ought to have awarded a considerable sum towards pain and suffering alone. Hence, this Court finds that a sum of Rs.31,000/- would be the just compensation payable under the head 'pain and suffering'. The amount of Rs.30,000/- already awarded will hold good only for 'Loss of earning capacity'. The amounts awarded towards other heads are confirmed.

9. In the result, the appeal is partly allowed by enhancing the quantum of compensation from Rs.69,000/- to Rs.1,00,000/-. It is made clear that only for the compensation of Rs.69,000/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.31,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. No costs.

10. The second respondent / Transport Corporation is directed to deposit the modified compensation as ordered above with interest and costs, within a period of four weeks from the date of receipt of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

pam/srk

To

1. The Motor Accident Claims Tribunal/Principal Sub Court, Erode.

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

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.64634

+1cc to Mr.N.Manoharan, Advocate SR.No.64782

CMA.No.1689 of 2006

RR(CO)
GMY(24/08/2020)



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