



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.1103 of 2011
and
MP.No.1 of 2011

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Division - II, Erode) Coimbatore,
Erode - 2. ...Appellant / 2nd Respondent

Versus

1.Duraisamy ..1st Respondent / Claimant

2.Jeeva Rathinam
[R2-given up] ..2nd Respondent / 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the award dated 02.07.2009 made in M.C.O.P.No.171 of 2008 on the file of the Motor Vehicles Accident Claims Tribunal and Additional District Judge, FTC No.1, Erode.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Ms.R.Shase
for M/s.R.Marudhachalamurthy and
M.Guruprasad (for R1)

: Given up - R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/ Transport Corporation challenging the award dated 02.07.2009 passed in M.C.O.P.No.171 of 2008 on the file of the Motor Vehicles Accident Claims Tribunal and Additional District Judge, FTC No.1, Erode.

2.The crisp facts of the case are that on 16.07.2007 at about 9.30 am, the claimant was riding the TVS-50 motorcycle bearing Regn.No.TN-33-K-6297 at Chennimalai to Vellode road near Sakthi Nagar from South to North direction. At that time the Bus



(Route No.11) bearing Regn.No.TN-33-N-0834 came from the opposite direction in a rash and negligent manner and hit the claimant/first respondent herein, as a result, he sustained fracture on his left and right hand, shoulder, serious head injuries and multiple grievous injuries. Therefore, the claimant/first respondent filed a claim petition before the above said Tribunal claiming a sum of Rs.6,96,500/- as compensation.

3.The Tribunal has awarded a sum of Rs.1,42,200/- as total compensation for the injuries sustained by the claimant. Contending that the compensation amount so awarded by the Tribunal is excessive, the Transport Corporation has come forward with the present appeal inter alia questioning their liability to pay compensation.

4.Before the Tribunal, on the side of the claimant, the claimant examined himself as P.W.1 besides examining one Dr.K.Krishnasamy as PW.2 and Dr.Rajeshkumar as PW.3 and as many as twenty eight documents were marked as Exs.P1 to P28. On the side of the respondent, one Jeevarathinam was examined as RW.1, and documentary evidence adduced on their behalf.

5.According to the learned counsel for the appellant/Transport it was the claimant who drove the two wheeler in a careless manner and contributed to the accident. On the other hand, the driver of the Corporation drove the bus carefully and cautiously and therefore the question of the transport corporation paying the compensation to the claimant does not arise. Even otherwise, the learned counsel for the appellant would contend that the amount awarded by the Tribunal towards disability and pain and suffering at Rs.25,000/- is excessive and not befitting the nature of injuries sustained by the claimant. The Tribunal ought to have considered the counter affidavit filed by the transport corporation against the claim petition filed by the claimant with respect to his age, occupation, income and the manner in which the accident said to have occurred and prayed for dismissal of the appeal.

6.According to the learned counsel appearing for the first respondent/claimant, the Doctor/PW.2 has examined the claimant and stated that he sustained fracture in his right and left hand wrist, blood clot on his right side brain and some abrasions all over the body and he assessed the claimant's permanent disability at 20%. Thereafter, he was examined by one Dr.Rajeshkumar, PW.3, who had issued a wound certificate, which was marked as Ex.P26. The Tribunal did not properly consider the deposition of PW.3 and the period of 15 days treatment he took for the injuries sustained in the said accident and awarded only a sum of Rs.1,42,200/- as compensation.

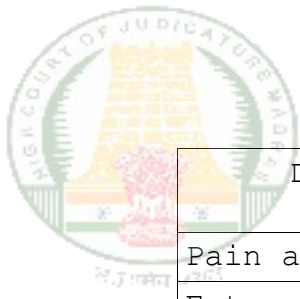


7.I have heard, the learned counsel appearing on either side and perused the materials available on record.

8.After going through the materials available on record it is seen that the claimant was aged 34 years at the time of accident, and he was admitted in C.K Hospital, Erode, where he took treatment as in patient for fifteen days. In order to prove his claim, medical bills Ex.P6 & P8 to P28 were placed before the Tribunal, which shows that a sum of Rs.64,216/- has been incurred during treatment. The Tribunal allowed the medical expenses incurred by the claimant based on the bills produced by him at Rs.64,200/- under the head of medical expenses. It is also brought to notice of this Court, the Tribunal did not grant any award amount towards transportation. Hence, this Court award a sum of Rs.5,000/- under the head of transportation in the interest of justice. The claimant has worked as Salesman and earning Rs.3000/ per month. Considering the nature of injury, the claimant could not perform his avocation as earlier, hence, this Court enhance the compensation under the head pain and suffering from Rs.25,000/- to Rs.30,000/- and this Court feels that under the head of Extra nourishment a sum of Rs.3000/- is very meager, which is enhanced to Rs.10,000/-.

9.Even though the present appeal is filed by the appellant/Transport corporation questioning their liability to pay compensation and also the quantum of compensation, as this Court feels that the quantum of compensation awarded to the claimant is not befitting the nature of injuries, this Court, even in the absence of any independent appeal or cross-objection filed by the claimant, this Court is still empowered to enhance the compensation amount as has been held by the Honourable Supreme Court in (Nagappa vs. Gurudayal Singh and others) 2003 ACJ 12. In that case, the Honourable Supreme Court has held that the Court need not restrict the compensation amount as claimed in the Claim petition and the Court can award more amount than the one sought for in the claim petition. It was further held that the Court is also empowered to permit amendment of the claim petition and in such circumstance, there is no question of claim being time barred.

10.Having regard to the above, the total compensation amount of Rs.1,42,200/- awarded by the Tribunal is hereby modified and enhanced to Rs.1,59,200/-. Thus, the award passed by the Tribunal is modified and enhanced as follows:-



Description	Amount awarded by Tribunal	Amount awarded by this Court
Pain and Suffering	Rs.25,000/-	Rs.30,000/-
Extra nourishment	Rs.3,000/-	Rs.10,000/-
Medical expenses	Rs.64,200/-	Rs.64,200/-
Permanent Disability	Rs.20,000/-	Rs.20,000/-
Loss of Income	Rs.30,000/-	Rs.30,000/-
Transportation	-	Rs.5,000/-
Total	Rs.1,42,200/-	Rs.1,59,200/-

11. In the result, this Civil Miscellaneous Appeal is disposed of by modifying the compensation amount of Rs.1,42,200/- awarded by the Tribunal to Rs.1,59,200/-. The appellant/Transport Corporation is directed to deposit the enhanced compensation amount as awarded in this appeal, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent is permitted to withdraw the same, by making necessary application before the Tribunal. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

klt

Sub Assistant Registrar

To

1. The Motor Vehicles Accident Claims Tribunal
(Additional District Judge), FTC No.1, Erode

+1 cc to Mr.K.J.Sivakumar, Advocate, S.R.No.13590

+1 cc to Mr.M.Guruprasad, Advocate, S.R.No.14215

CMA No.1103 of 2011
and
MP.No.1 of 2011

VD(CO)
SSM(24/09/2019).