

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.03.2019
CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN
C.M.A.No.3957 of 2008

Kannan

... Appellant/Claimant

Versus

The Managing Director,
Karnataka State Transport Corporation Ltd.,
K.H.Road,
Bangalore - 27.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.11.2005 in M.C.O.P.No.432 of 2003 on the file of Motor Accident Claims Tribunal, Additional Subordinate Court, Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondent : Mr.T.Thiyagarajan

J U D G M E N T

Not being satisfied with the quantum of compensation awarded in M.A.C.T.O.P.No.432 of 2003 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Court, Tiruvannamalai in and by award dated 25.11.2005, the claimant has filed the present appeal seeking enhancement of the compensation amount.

2.According to the claimant, on 30.10.2002 at 4.00 pm., he was travelling in a Karnataka State Transport Corporation bus bearing Regn.No.KA-01-F-7195, which was driven by its driver in a rash and negligent manner and dashed against the Stationary Lorry bearing Regn.No.TN-31-P-9459, and the claimant and other co-passengers in the bus sustained grievous injuries and simple injuries. Therefore, the claimant preferred the claim petition in MACTOP.No.432 of 2003, claiming a sum of Rs.5,00,000/- as compensation.

3.The claim petition was resisted by the Transport Corporation repudiating the manner in which the accident had

occurred and the nature of injuries said to have sustained by the claimant.

4. In order to substantiate the averments made in the claim petition, on the side of the claimant, the claimant examined himself as P.W.1, besides examining one Dr. Raveendran as P.W.2 and marked eight documents as Ex.P1 to P8. On the side of the respondents, neither oral nor documentary evidence was adduced. After analysing the oral and documentary evidence, the Tribunal awarded a sum of Rs.63,000/- as compensation.

5. The learned counsel appearing for the appellant/claimant submitted that the award passed by the Tribunal is too low, considering the nature of injuries, age, avocation and income of the claimant. It is the main contention of the counsel that the claimant suffered 45% permanent disability, but the Tribunal had failed to note that Ex.P4 & P7 viz., wound certificate and disability certificate of the claimant and failed to consider the age of the claimant at the time of accident as he was working as Mason, earning a sum of Rs.5,000/- per month. Now, the claimant could not undertake his employment as before the accident. In such circumstances, the Tribunal has adopted multiplier '18' instead of '16', which is not fair and reasonable. Further, he contended that the Tribunal fixed the claimant's notional income of Rs.10,000/- per annum, which is too meagre. Hence, the claimant has come up with the present appeal before this Court for enhancement of compensation.

6. Per contra, the learned counsel appearing for the Transport Corporation submitted that the Tribunal has already adopted the multiplier as per the year of 2002 and the same is hereby confirmed. On a perusal of the evidence adduced on behalf of the claimant/PW1 and the deposition of Doctor/PW.2, who examined the claimant and assessed the disability at 45%. Taking note of the injuries sustained by the claimant, the Tribunal has awarded a just and fair compensation and it does not call for any interference. Hence, he prayed for dismissal of the appeal.

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

8. On the point of rash and negligence on the part of the driver of the Transport Corporation is not in dispute and the same is hereby confirmed.

9. After going through the evidence of PW.2/Doctor, who had issued the Ex.P7/disability certificate assessing at 45%, but the Tribunal fixed the disability at 30%, as per Ex.P5/discharge summary of the claimant, it is clearly mentioned that he was admitted in the hospital on 30.10.2002 and took

first surgery and on 02.11.2002, he took the second surgery. Taking note of the fact that the treatment given by the Doctor was incorporated in the discharge summary and as per Ex.P4/wound certificate, it is stated that the claimant suffered fracture on his right thigh, due to the dislocation of the thigh bone, his regular function was affected and he could not stand or walk as before the accident. Taking into consideration of the medical condition of the injured claimant also reflected in Ex.P5/discharge summary and PW.2/Doctor's report, the Tribunal fixed the disability as functional disability and adopted the multiplier as per the date of the accident. In all the facts and circumstances of the case, by fixing the disability at 30% and adopting multiplier '16' it cannot be found faulted and the same is hereby confirmed. However, the other compensation under the conventional heads are also found to be reasonable, which would be a proper compensation.

10. However, this Court feels that a sum of Rs.5,000/- towards pain and suffering awarded by the Tribunal has to be enhanced at Rs.7,000/-. The Tribunal did not award any amount under the heads for loss of amenities, transportation and attender charges. Having regard to the nature of injuries sustained by the claimant and the period of his hospitalisation, this Court is inclined to award a sum of Rs.3,000/-each under the above said heads. Accordingly, the award passed by the Tribunal is modified as indicated below:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.48,000/-	Rs.48,000/-
Loss of income	Rs.10,000/-	Rs.10,000/-
Pain and suffering	Rs.5,000/-	Rs.7,000/-
Transportation	-	Rs.3,000/-
Loss of amenities	-	Rs.3,000/-
Attender charges	-	Rs.3,000/-
Total	Rs.63,000/-	Rs.74,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed.

(i) The compensation awarded by the Tribunal at Rs.63,000/- is enhanced to a sum of Rs.74,000/- with interest at the rate of 7.5% per annum, since the accident in the year 2002, from the date of petition till the date of realisation.

(ii) The respondent/Transport corporation is directed to deposit the enhanced award amount as determined by this Court,

along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit being made, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

(iv) The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

klr

To

1.The Motor Accidents Claims Tribunal,
Additional Subordinate Court, Thiruvannamalai.

2.The Section Officer,
V.R. Section, High Court, Madras - 104.

C.M.A.No.3957 of 2008

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