

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2062 of 2009

V.Michael

... Appellant

.Vs.

The Managing Director,
M/s. Tamil Nadu State Transport Corporation,
Salem.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 07.12.2007 passed in M.C.O.P.No.46 of 2006 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Vellore.

For Appellant : Mr.S.Haroon Al Rasheed
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.S.S.Swaminathan

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.46 of 2006 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Vellore. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 14.09.2005.

2. The case of the claimant is that on 14.09.2005, he was travelling as a passenger in a bus bearing Registration No. TN 29 N 1565 and at about 03.00 hours, when he was nearing Pachel, Chengam, the driver of the bus drove the bus rashly and negligently and hit a stationery lorry bearing Registration No. TN 31 Q 3134, as a result of which, the claimant sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of the bus belonging to the Tamil Nadu State Transport Corporation was the cause of the accident and therefore, they are liable to pay compensation.

3. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Vellore, after analysing the evidence on record, awarded a compensation of Rs.99,000/- together with interest at the rate of 7.5% per annum to the claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.S.Haroon Al Rasheed, learned counsel appearing for the appellant / claimant and Mr.S.S.Swaminathan, learned counsel appearing for the respondent / Tamil Nadu State Transport Corporation.

5. A perusal of the discharge summary (Ex.P7) shows that the claimant had sustained the following injuries:

- "(i) A 4 X 2 X 1 cms laceration on the right side of the scalp on the parietal region.
- (ii) Entry wound : 5 X 4 cms, just above the umbilicus, depth-within the peritoneal cavity.
- (iii) Exit wound : 6 X 5 cms at the right lower coastal margin. Depth - peritoneal cavity. A 3 feet long iron entering superiorly and exiting as mentioned above.
- (iv) Fracture left Scapula.
- (v) Laceration Left leg - 5 X 3 X 2 cms.
- (vi) Laceration Right leg - 15 X 5 X 3 cms.
- (vii) Laceration Right wrist 3 X 5 cms."

6. The discharge summary (Ex.P7) shows that a four feet long iron rod pierced his abdomen just above the umbilicus and it came out through right lower rib cage and through 10th and 11th ribs. An operation was performed under general anesthesia for removal of the four feet long iron rod. Dr.Shanmugasundaram (P.W.2) has assessed the partial permanent disability as 35%. It is also seen that there is no damage to liver, stomach, gall bladder, duodenum, colon, kidney. In the facts and circumstances, since there is no functional disability, awarding a sum of Rs.2,000/- per percentage of disability in the opinion of this Court would meet the ends of justice. In the claim petition, it is contended that the claimant is a carpenter, earning a sum of Rs.5,000/- per month. No income proof was adduced by the claimant. Since the accident took place in the year 2005, a sum of Rs.4,500/- is fixed as his notional monthly income. On account of the accident, he would not have been in a position to attend to his routine work atleast for three months and therefore a sum of Rs.13,500/- (Rs.4,500/- X 3 months) is awarded towards "loss of income". The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.70,000/-
2.	Loss of amenities	Rs.50,000/-
3.	Pain and sufferings	Rs.50,000/-
4.	Medical expenses	Rs.23,142/-
5.	Extra nourishment	Rs.5,000/-
6.	Transportation	Rs.10,000/-
7.	Attender's charges	Rs.5,000/-
8.	Damage to clothes	Rs.500/-
9.	Loss of income	Rs.13,500/-
Total		Rs.2,27,142/-

7. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.99,000/- to Rs.2,27,142/-, which would carry interest at the rate of 7.5% per annum.

(iii) The respondent / Tamil Nadu State Transport Corporation is directed to deposit the enhanced compensation amount i.e., Rs.2,27,142/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.46 of 2006 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Vellore, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Vellore.

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

+1cc to Mr.Gopalan, Advocate SR.97339
+1cc to Mr.Swaminathan, Advocate SR.97311

C.M.A.No.2062 of 2009

MG(CO)
CB(19/10/2020)



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