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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1161 of 2012

P.K.Ayyasamy

...Appellant/ Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram Division) Ltd.,
Pallavan Salai,
Chennai- 600 002.

... Respondent/ Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 21.07.2011, in M.C.O.P.No. 929 of 2007 on the file of the Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondent : Mr.S.V.Vasanthan kumar

JUDGMENT

The appellant is the claimant in M.C.O.P.No.929 of 2007, on the file of the Motor Accidents Claims Tribunal, Small Causes Court, Chennai. He has filed the above claim petition under Section 163(A) of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 25.03.2006.

2. The brief case of the appellant/claimant is as follows:

On 23.05.2006, at about 4.45 am, the appellant/claimant travelled as passenger in TNSTC bus bearing Registration No.TN 23 N 1588 along Bye-Pass Road, Visalam, near the Nanthiyalam Petro Bunk, the driver of the bus drove the same in a rash and negligent manner and dashed against a Lorry bearing Registration No.TN 20 Q 7528, thereby the appellant/claimant sustained grievous injuries. The driver of the respondent's Corporation bus was responsible for the accident. The respondent as the owner of the vehicle is liable to pay compensation. The



appellant/claimant claimed a total compensation of Rs.2,00,000/- from the respondent.

3. The learned Tribunal, after analysing the evidence on record, held that the claimant is entitled for compensation of Rs.1,79,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not 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. The learned counsel appearing for the appellant/claimant contended that the compensation awarded by the Tribunal under the head 'disability' is too meagre, especially, when the appellant/claimant has sustained injury in right foot, dislocation in right ankle, loss of four teeth, dislocation of right lower jaw. He would further contend that the compensation awarded by Tribunal under other heads is also meagre and therefore, it should be enhanced.

5. Per contra, the learned counsel appearing Transport Corporation would contend that at the time of the accident, one lorry which carry brick load was going in front of the bus, dashed against the respondent's bus, the side angle of the lorry grazed the bus, due to which, two male passengers were seated in back side and sustained injuries and one girl died. The accident had happened only due to the rash and negligent act of the private vehicle and not due to the fault of this respondent drive. The driver of the lorry bearing Registration No.TN 20 Q 7518 did not possess valid driving licence at the time of the alleged accident. The appellant/claimant should prove that the age, monthly income, the nature of injuries, period of treatment, medical expenditure and the percentage of disability suffered. The amount of compensation claimed is highly excessive.

6. Heard both the parties and perused the documentary and oral evidence adduced before the Tribunal.

7. Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 were examined and Exhibits P1 to P19 were marked. On behalf of the respondent-Transport Corporation, R.W.1 was examined and no documents were marked.

8. On re-appreciation of the evidence, this Court holds that based upon Exhibits P4 to P7 Prescriptions and also Exhibit P8 Scan Report coupled with P.W.2 evidence, the injury has suffered 55% for minimal right paracentral disc protrusion at L4-L5 level. On perusal of cross examination of P.W.2, he admits that he did not give treatment to the injured. Though X-ray was taken



at present, the report for the same was not filed. P.W.2 also admits that there is possibility of 5% difference between doctors in assessing disability. Considering the nature of injury, he sustained the assessment of disability by P.W.2 appears to be on the higher side and the same is fixed as 40% partial permanent disability.

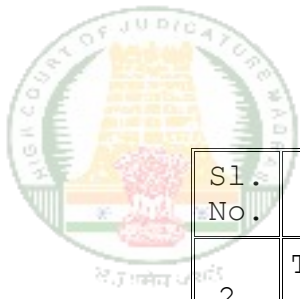
9. As such P.W.3 Dr.T.S.Kalkura has been examined and the Disability Certificate issued by him is marked as Exhibit P18. The Doctor has assessed his disability at 40% for dental injuries. On perusal of cross examination of P.W.3, he admits that he did not give treatment to the injured. Though X-ray was taken at present, the report for the same was not filed. P.W.3 also admits that there is possibility of 5% difference between doctors in assessing disability. Considering the nature of injury he sustained the assessment of disability by P.W.3.

10. Taking into consideration of the medical evidence of P.W.2-Doctor J.R.R.Thiyagarajan and P.W.3-Doctor T.S.Kalkura and coupled with Exhibits P17 and P18, the Tribunal has fixed the disability at 70% and accordingly, awarded Rs.2,000/- per percentage and awarded a sum of Rs.1,40,000/- and the same is hereby confirmed.

11. Due to the injuries sustained in the accident, the appellant/claimant would have been prevented from attending his work to a maximum of 3 months. Hence, a sum of Rs.9,000/- has awarded towards 'loss of earning' and the same is hereby confirmed. With regard to medical expenses, Rs.15,000/- has awarded by the Tribunal and the same is hereby confirmed. The compensation awarded under the head 'Transportation' is enhanced from Rs.2,500/- to Rs.10,000/-, towards 'extra nourishment' is enhanced from Rs.2,500/- to Rs.10,000/-, towards 'pain and sufferings' is enhanced from Rs.10,000/- to Rs.20,000/-, a sum of Rs.15,000/- is awarded towards 'loss of amenities'. Since, the appellant/claimant took treatment at Government Hospital, a sum of Rs.10,000/- is awarded towards attender's charges. No amount is awarded by the Tribunal under the head 'loss of amenities' and therefore, a sum of Rs.15,000/- is awarded under the same. All the other heads awarded by the Tribunal is hereby confirmed.

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 929 of 2007 is modified as follows:-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of income for 3 months	Rs. 9,000/-	Rs. 9,000/-



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Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
2.	Transportation	Rs. 2,500/-	Rs. 10,000/-
3.	Extra nourishment	Rs. 2,500/-	Rs. 10,000 /-
4.	Medical expenses	Rs. 15,000/-	Rs. 15,000/-
5.	Pain and sufferings	Rs. 10,000/-	Rs. 20,000/-
6.	Disability of 70% at the rate of Rs.2000/- per percentage	Rs.1,40,000/-	Rs.1,40,000
7.	Attender's charges	----	Rs. 10,000/-
8.	Loss of amenities	----	Rs. 15,000/-
	Total	Rs.1,79,000 /-	Rs.2,29,000/-

The compensation awarded by the Tribunal is enhanced from Rs.1,79,000/- to Rs.2,29,000/- which shall carry interest at the rate of 7.5% per annum.

13. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,29,000/- to Rs.1,79,000/-. It is made clear that the appellant/claimant is entitled to interest only at the rate of 7.5% per annum.

(iii) The respondent herein - Tamil Nadu State Transport Corporation is directed to deposit the entire compensation of Rs.2,29,000 /- (if not 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. 929 of 2007, dated 21.07.2011, on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai within a period of twelve weeks from the date of receipt of a copy of this order.



(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount after following the due process of law.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
The III Judge, Small Causes Court,
Chennai.

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

+lcc to Mr.A.Shanmugaraj, Advocate, SR.No.28622/19

+lcc to Mr.S.V.Vasanth Kumar, Advocate, SR.No.28625/19

C.M.A.No.1161 of 2012

Kak(26/08/2019)