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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.1909 of 2015

Murugan

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram Division-I) Ltd,
No.3/137, Salamedu,
Vazhutha Reddy,
Villupuram District.

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.11.2014 and made in M.A.C.T.O.P.No.666/2010 on the file of the Motor Accident Claims Tribunal (V Judge Small Causes Court), Chennai.

For Appellant : M/s.A.Subadra
for M/s.M.Malar

For Respondents : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.666 of 2010, dated 07.11.2014, on the file of the V Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2. The appellant is the claimant in M.C.O.P.No.666 of 2010, on the file of the learned V Judge Small Causes Court (Motor Accidents Claims Tribunal), Chennai. He filed the above said MCOP claiming compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 14.11.2008, at about 03.00 hrs, when the appellant was riding the Tyre Cart from Cuddalore to Salam Road, near Ankuchettypalayam, Panrutti Taluk, Cuddalore District. At that time, the respondent / Tamil Nadu State Transport Corporation bus bearing Reg.No.TN.32-N-2620 came in a rash and negligent manner and hit the appellant Tyre Cart, due to which, Tyre cart was damaged and two bullocks died and the appellant had also sustained grievous injuries. In the counter affidavit, the respondent / Tamil Nadu State Transport Corporation denied the rash and negligent driving on the part



of the driver of the Transport Corporation.

3. The Tribunal considering the pleadings, oral and documentary evidences adduced on the side of the injured held that the accident occurred due to the rash and negligent driving of the driver of the bus belonging to the respondent / Tamil Nadu Transport Corporation and directed the respondent / Tamil Nadu Transport Corporation to pay the compensation of Rs.1,74,000/- to the appellant/claimant.

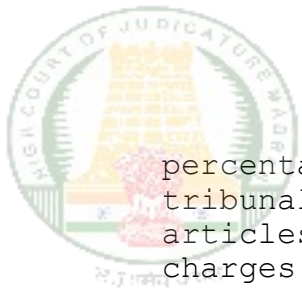
4. Before the Tribunal, on the side of the claimant, witnesses P.W.1 and P.W.2 were examined and following exhibits were marked:

(a)Ex.P1	:	Copy of FIR
(b)Ex.P2	:	Discharge summary
(c)Ex.P3	:	PM report of both bullock
(d)Ex.P4	:	MV report
(e)Ex.P5	:	Photographs
(f)Ex.P6	:	Disability certificate

On the side of the Respondent / Transport Corporation, no one was examined and no exhibits were marked.

5. Aggrieved by the award passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act.

6. The learned counsel for the appellant submitted that on 14.11.2008 at about 03.00 hrs, the appellant was riding the Tyre Cart from Cuddalore to Salem Road, near Ankuchettypalayam, Panrutti Taluk, Cuddalore District. At that time, the respondent / Tamil Nadu State Transport Corporation bus bearing Reg.No.TN.32-N-2620 came in a rash and negligent manner and hit the appellant's Tyre Cart, due to which, Tyre cart was damaged and two bullocks died and the appellant had also sustained grievous injuries and thereafter the appellant was admitted in Government Hospital, Cuddalore. The learned counsel for the appellant contented that the Doctor who treated the injured was examined by the tribunal as P.W.2 and the Doctor pointed out that the appellant has sustained head injury with cerebral Edema, fracture of left public rami with Diastases, fracture of L4 & L4 compression, fracture of lift head of humerus shoulder hence assessed 15% for post traumatic headache, giddiness, tremors left hand and leg movement deficit, left humerus is mal united, fibrosis left shoulder and muscles abduction 80 IRRER 60 limited. The Doctor has also pointed out that the injured finds it difficult to work and carry weight with left hand for which he assessed 30% disability and in total the Doctor assessed 80% as partial and permanent disability and issued disability certificate. But the tribunal has considered only 41% disability and awarded a sum of Rs.82,000/- for disability (Disability at 41%, at the rate of Rs.2,000/- per



percentage). The learned counsel further submitted that the tribunal has not awarded any compensation for damages of articles, transport expenses, extra nourishment and attender's charges.

7. The learned counsel appearing for the respondent/Tamil Nadu Transport Corporation on the other hand contended that the accident occurred only due to the rash and negligent driving of the victim. He further submitted that there is no proof for occupation or income of the injured and in the absence of any details, the Tribunal erroneously fixed the monthly income at Rs.6,500/- without any basis and on the whole, the sum awarded by the Tribunal under other heads is excessive. He further submitted that the tribunal ought not have reduced the disability assessed by the doctor and ought to have applied the multiplier method by considering the nature of injuries and disability.

8. On perusal of records, it is seen that the particulars has been furnished by the appellant regarding his age, income and occupation and the same are taken into consideration by the Tribunal and this Court also concurs with the findings of the Tribunal. The injured was aged about 34 years at the time of accident and he was working as an agriculturalist. The injured is also Tyre Cart Owner cum driver of the Bullock Cart and he earned about Rs.500/- per day. It is observed from the evidence of doctor that the disability sustained by the claimant has been stated as 80%. However, the tribunal has considered the disability only at 41%. The tribunal has considered the loss of earning during the period of treatment and awarded a sum of Rs.27,000/- which is also very meager. The tribunal has not awarded a considerable compensation inspite of the disability sustained by the appellant. The amount awarded by the Tribunal towards pain and suffering is meager and the same is enhanced to Rs.30,000/- . The amount awarded by the Tribunal towards loss of amenities is meager and the same is enhanced is Rs.20,000/- and the amount awarded by the Tribunal towards death of two bullocks is also meager, hence enhanced to Rs.40,000/-. Thus, the compensation awarded by the Tribunal is modified as follows:

9. Hence the total compensation payable to the appellant is as hereunder

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Transportation, extra nourishment and damage to clothes	Rs.15,000/-	Rs.25,000/-
2.	Medical expenses	Rs.5,000/-	Rs.5,000/-



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

+1cc to M/s.M.Malar, Advocate SR.No.47597

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SS (CO)
GMY (26/11/2019)



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