

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2011 of 2012

P.Vaithiyanathan

...Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Express Transport
Corporation Ltd.,
(Division - 1)
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 30.09.2011 in M.C.O.P.No. 2153 of 2007 on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondent : Mr.S.V.Vasantha kumar

JUDGMENT

The appellant is the claimant in M.C.O.P.No.2153 of 2007, on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai. He has filed the above claim petition under Section 166 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 17.05.2001.

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

On 17.05.2001, at about 00.30 hours, the appellant/claimant was driving the Car bearing Registration No.TN 09 S 0029 along National Highway Road, Bidagam Village, near Railway Gate, Villupuram District. From Kadambur to Chennai, the respondent's Corporation bus bearing Registration No.TN 01 N 6317 came from opposite direction in a rash and negligent manner and wrong side and hit against the car, thereby, the claimant sustained grievous injuries. According

to the appellant/claimant, the rash and negligent driving of the driver of the said bus was the cause of the accident, and that, since, the said bus belonged to the Tamil Nadu State Express Transport Corporation, they are liable to pay compensation of Rs.2,00,000/- to him.

3. The learned Tribunal, after analysing the evidence on record, held that the claimant is entitled for compensation of Rs.1,06,000/-. 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 would contend that the disability arrived by the Tribunal is very low. He would further contend that the Tribunal without considering the various injuries sustained by the claimant, awarded a very meagre compensation.

5. Per contra, the learned counsel appearing State Express Transport Corporation would contend that at the time of the accident, the claimant should prove that the vehicle was having valid fitness certificate and the driver who was having valid driving licence to drive the vehicle. The claimant was driving the Car bearing Registration No. TN 09 S 0029 came in a rash and negligent manner in the opposite direction and dashed against the bus and caused the accident. The accident occurred only due to the negligence on the part of the driver of the car. 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 and P.W.2 were examined and Exhibits P1 to P8 were marked. On behalf of the respondent-Transport Corporation, no one was examined and no documents were marked.

8. The factum of the accident and the manner of the accident and rash and negligence on the part of the driver of the Transport Corporation are not in dispute and hence, the same is hereby confirmed.

9. On re-appreciation of the evidence, this Court holds that based upon Exhibits P3-Discharge summary, Exhibit P4-Treatment record and Exhibit P7-Disability Certificate coupled with P.W.2 evidence, the injury has suffered fracture of both Jaws Skull, neck, loss of two teeth at upper jaws and shaken of all teeth at lower jaw and grievous cut injuries

leads to disfigaration of face and P.W.2 Doctor had deposed that the plate inserted is still inside at mandible, the claimant is facing difficulty to open the mouth fully, to speech and there is no sensation at the right side fact muscle, there is loss of three upper teeth and two lower teeth and there is scar in the face.

10. Taking into consideration of the medical evidence of P.W.2-Doctor J.R.R.Thiyagarajan coupled with Exhibits P4 and P7, the disability is fixed at 70% and accordingly, awarded Rs.1,500/- per percentage and awarded a sum of Rs.1,05,000/-.

11. Due to the injuries sustained in the accident, the appellant/claimant would have been prevented from attending his work to a maximum of 2 months. Hence, a sum of Rs.6,000/- has awarded towards 'loss of earning' and the same is enhanced to Rs.9,000/-. 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.5,000/-, towards 'extra nourishment' is enhanced from Rs.2,500/- to Rs.8,000/-, towards 'pain and sufferings' is enhanced from Rs.5,000/- to Rs.20,000/-, a sum of Rs.30,000/- 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.

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 2153 of 2007 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of income for 2 months	Rs. 6,000/-	Rs. 9,000/-
2.	Transportation	Rs. 2,500/-	Rs. 5,000/-
3.	Extra nourishment	Rs. 2,500/-	Rs. 8,000 /-
4.	Medical expenses	Rs. 15,000/-	Rs. 15,000/-
5.	Pain and sufferings	Rs. 5,000/-	Rs. 20,000/-
6.	Disability of 70% at the rate of Rs.1500/- per percentage	Rs. 75,000/-	Rs.1,05,000

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
7.	Attender's charges	----	Rs. 10,000/-
8.	Loss of amenities	----	Rs. 30,000/-
	Total	Rs.1,06,000 /-	Rs.2,02,000 /-

The compensation awarded by the Tribunal is enhanced from Rs.1,06,000/- to Rs.2,02,000/- 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.1,06,000/- to Rs.2,02,000/-. 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 Express Transport Corporation is directed to deposit the entire compensation of Rs.2,02,000/- (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. 2153 of 2007 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.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

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

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

+lcc to Mr.A.Shanmugaraj, Advocate SR.No.32867

C.M.A.No.2011 of 2012

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



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