

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.04.2019

PRONOUNCED ON:11.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A. No. 2206 of 2012

M.Jayakumar

... Appellant

Versus

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 600 002.

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Additional District Judge, Motor Vehicles Act, 1988, against the award dated 09.01.2012 made in MACTOP.No.4584 of 2009 on the file of the Motor Accidents Claims Tribunal, (Fast Track Court No.IV) Chennai.

For Appellant : Mr.K.Suryanarayanan

For Respondent: Mr.K.S.Suresh

JUDGMENT

The claimant is the appellant herein, who has preferred this appeal against the award dated 09.01.2012 made in MACTOP.No.4584 of 2009 on the file of the Additional District Judge, Motor Accidents Claims Tribunal, (Fast Track Court No.IV), Chennai.

2.The brief facts of the case are as follows:-

On 26.09.2008 at 15.15 hours, when the claimant was about to board the bus from the front passage in the bus, Route No.119A, bearing Registration No.TN-01-5376 at Sollinganallur Signal bus stop, the driver of the bus, who drove the bus in a rash and negligent manner and as a result, the claimant sustained grievous injuries all over the body. Due to the impact, the claimant lost his control and fell down, the wheel of the bus ran over in the both legs. Hence, due to the rash and negligence on the part of the bus driver, the accident was caused. Therefore, the claimant filed the claim petition, claiming a sum

of Rs.10,00,000/- as compensation.

3.The Transport corporation filed a counter statement disputing the negligence as well as the quantum of compensation as claimed in the claim petition. According to the respondent, the claimant had attempted to board the moving bus and due to his own negligence, he fell down and sustained the injuries. Therefore, according to the respondent, the claimant had contributed for the accident for which the respondent cannot be mulcted with any liability.

4.During trial, the injured examined himself as PW.1 besides examining one Dr.Saichandran as PW.2 and Ex.P1 to P7 were marked. On behalf of the respondent, RW1/Investigator of Transport corporation was examined and no document was marked.

5.Taking into consideration of the oral and documentary evidence of PW.1 and also Ex.P1/FIR and in the absence of any document filed by the transport corporation, the Tribunal has come to the conclusion that the accident had taken place due to rash and negligent driving of the driver of the Transport corporation bus and also observed that the evidence of RW.1 namely Investigating Officer of the Transport corporation is only self serving statement. Accordingly the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Transport corporation. Hence, in the absence of any contra evidence the said finding of the Tribunal is hereby confirmed.

6.The learned counsel appearing for the claimant would contend that due to the accidental injuries, the claimant suffered 55% of disability, which was assessed by the Doctor/PW.2. In view of the said injuries, the claimant could not perform his painting work as before the accident. It is seen from the disability certificate/Ex.P6 that due to the injuries, the claimant suffered shortening of his leg besides fracture in his right femur bone. Accordingly, he contend that the multiplier method has to be adopted for determining the loss of earning capacity of the claimant.

7.Learned counsel appearing for the Transport corporation has contended that the award passed by the Tribunal is just and fair. Hence, he prays to dismiss the appeal.

8.After going through the oral and documentary evidence of Ex.P6 issued by PW.2/Doctor, it appears that the claimant sustained crush injury with fracture of right shaft of femur with soft tissue loss in both legs and head injury. He took first spell of treatment in Global Hospital as in-patient from 26.09.2009 to 06.10.2009 and he took second spell of treatment

from 08.10.2009 to 10.10.2009, during which, rods and screws were implanted in the leg and he spent huge sum of Rs.1,00,000/- towards his medical treatment; a sum of Rs.15,000/- towards transportation and Rs.50,000/- towards attender charges. It would incur him cost for Rs.1,00,000/- more for future surgery and he need others help to do his routine work. According to the claimant, his right leg shortened by 2^{1/2} inches, he is limping, he get pain on prolonged standing and walking and sometimes he got head ache and giddiness. As a result of the same, he could not participate in any general gathering and functions.

9. After going through the evidence of PW.2/Doctor and also going through the status of the injury as it could be seen from Ex.P2/Discharge summary that he was admitted on 26.09.2009 and discharged on 06.10.2009, for the treatment of right shaft of femur with soft tissue both legs fractures and the surgery has been done on 27.09.2009 as per the surgical procedure of "Intramedullary Nailing (R) Femur GK Nail 400 x 10 MM(R) (STRYKER HOLOMEDICA) 2 Screw distally 30 x 44. At that time of discharge, the claimant has been advised to review for plastic surgeon opinion. As per Ex.P3/Discharge summary, on 08.10.2009 the claimant was admitted for the second spell of treatment and discharged on 10.10.2009. The diagnosis in Fracture of (r) Shaft of femur with soft tissue injury both legs. On 10.10.2009 wound debridement with SSG has been done. The Post Operative period is stated to be uneventful. Ex.P4 are the medical bills, incurred by the claimant for Rs.21,309.15/-. Ex.P6 is the disability certificate issued by PW.2 assessing his disability at 55% for the injuries sustained in the accident as stated supra. Hence, his muscles are fibrosed, the abduction of right leg is reduced, his right leg is shortened by 1^{1/2} inch of than the left leg.

10. Thus, this Court notices the positive evidence to show that the work of the claimant being painter is affected due to the accidental injuries. Therefore, the Tribunal has rightly applied the compensation for the disability at 55% and hence, on the above facts and circumstances of the case and based upon the oral and documentary evidence as extracted above, this Court is of the view that the award passed by the Tribunal does not warrant any interference to award compensation by resorting to multiplier method and the said plea raised on behalf of the claimant/appellant before this Court cannot be granted. The claimant did not fulfil the criteria laid down by the Honourable Supreme Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC to award compensation by applying multiplier method. The Tribunal blatantly awarded a sum of Rs.40,000/- towards injuries; a sum of Rs.50,000/- towards treatment and other expenses and a sum of Rs.90,000/- towards disability as compensation, which is not proper.

11.Considering the disability of the claimant, this Court feels that compensation amount under the head 'disability and loss of income' has to be awarded. Accordingly, fixing Rs.3,000/- per percentage of disability 55%, a sum of Rs.1,65,000/- (Rs.3000 x 55) towards disability shall be awarded which will be a fair and reasonable compensation. Having regard to the nature of injury, period of hospitalisation and the pain and suffering that would have been undergone by the claimant, a sum of Rs.30,000/- under the head of 'pain and suffering'; a sum of Rs.15,000/- towards Attender charges; a sum of Rs.20,000/- towards love and affection are hereby awarded. Considering the medical bills, which reflects the amount incurred towards Medical expenses the sum of Rs.21,309/- is awarded towards medical expenses to meet the ends of justice; a sum of Rs.15,000/- towards Transport charges and a sum of Rs.15,000/- towards Extra-nourishment are also awarded.

12.Consequently, the total compensation amount of Rs.1,80,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.2,81,310/-. The break up details of the enhanced compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Injuries	Rs.40,000/-	-
Treatment & other expenses	Rs.50,000/-	-
Disability	Rs.90,000/-	Rs.1,65,000/-
Pain & suffering	-	Rs.30,000/-
Attender charges	-	Rs.15,000/-
Love and affection	-	Rs.20,000/-
Medical expenses	-	Rs.21,309/-
Extra-nourishment	-	Rs.15,000/-
Transport charges	-	Rs.15,000/-
Total	Rs.1,80,000/-	Rs.2,81,309/- (round off Rs.2,81,310)

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.1,80,000/- awarded by the Tribunal is hereby enhanced to Rs.2,81,310/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The respondent/Transport corporation is directed to deposit the enhanced award amount 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 Judgement. On such deposit being made, the appellant/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Additional District Judge,
Motor Accidents Claims
(Fast Track Court) Chennai.

+1cc to Mr.K.Suryanarayanan, Advocate, SR.No.35627

C.M.A.No.2206 of 2012

Kak(19/06/2019)



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