

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3359 of 2011
and
Cros. Obj.No.31 of 2012

C.M.A.No.3359 of 2011

The Managing Director,
Metropolitan Transport Corporation Ltd,
Pallavan House,
No.2, Pallavan Salai,
Chennai - 600 002. Appellant / Respondent

.. Vs ..

S.Selvakumar Respondent / Petitioner

Cross. Obj.No.31 of 2012:

S.Selvakumar Cross Objector/Petitioner

.. Vs ..

Metropolitan Transport Corporation Ltd,
Rep. by its Managing Director,
Pallavan Salai,
Chennai - 600 002. Respondent/Respondent

Prayer in C.M.A.No.3359 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order dated 24.06.2010 passed in M.C.O.P.No.1913 of 2009, by the learned III Judge, Small Causes Court, Motor Accidents Claims Tribunal, Chennai.

Prayer in Cross.Objection No.31 of 2012: Cross Objection filed under Order 41, Rule 22 of C.P.C. against the fair and decretal order dated 24.06.2010 passed in M.C.O.P.No.1913 of 2009, by the learned III Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant in C.MA.No.3359/2011
& Respondent in Cross. Obj. No.31/2012 : Mr.S.S.Swaminathan

For Respondent in C.M.A.No.3359/2011
& Appellant in Cross. Obj. No.31/2012: Mrs.P.T.Saleem Fathima

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COMMON JUDGMENT

C.M.A.No.3359 of 2011 is preferred by the Transport Corporation against the fair and decretal order dated 24.06.2010 passed by the learned III Judge, Small Causes Court, Motor Accidents Claims Tribunal, Chennai, in M.C.O.P.No.1913 of 2009. On the other hand, the claimant has filed Cross Objection No.31 of 2012 seeking enhancement of compensation awarded by the Tribunal.

2. Since both the appeal and the cross-objection arise out of the same accident and as against the award passed by the Tribunal, both are taken up together and disposed of by way of this common judgment.

3. The claimant has preferred the claim petition before the Tribunal alleging that on 21.06.2009 at about 02.00 hours, when he was traveling in MTC bus bearing Registration No.TN-01-N-4629 from Poonamalle to Nerkundram by sitting in the front left side of the bus, the driver, who drove the bus in a rash and negligent manner, had gone to the extreme left side of the road and dashed against the stationary lorry bearing Registration No.TN-23-AA-9506, which was parked on the extreme left side of the road and thereby, the claimant sustained grievous injuries. The accident had occurred due to the rash and negligent driving of the driver of the transport corporation bus and hence, the claimant has filed the claim petition claiming a sum of Rs.26,00,000/- as compensation from the Transport Corporation.

4. Before the Tribunal, the injured/claimant examined himself as P.W.1 and Dr.N.Saichandran was examined as P.W.2 and documents Exs.P.1 to P.9 were marked on the side of the injured/claimant. On behalf of the Transport Corporation, the driver of the transport corporation bus was examined as R.W.1 and no documents were marked.

5. The rash and negligent driving on the part of the driver of the Transport Corporation is not in dispute. Quantum of compensation awarded by the Tribunal is under challenge.

6. Learned counsel appearing for the Transport Corporation would contend that the percentage of disability fixed by the Tribunal is on the higher side and drew my attention to the evidence of P.W.2-Doctor and Ex.P.7-Disability Certificate.

7. Per contra, learned counsel appearing for the claimant/cross objector would contend that the Tribunal has not awarded any amount towards future prospects and also towards loss of amenities. Due to the accident, the claimant has suffered damage to the facial/left eyelid lacerations and had undergone skin grafting. It is further contended that loss of marital prospects has not been considered by the Tribunal.

8. P.W.2-Dr.N.Saichandran, who had assessed the disability, deposed in his evidence that the claimant cannot fold left leg beyond 20 degrees and left ankle movements were also restricted and the movement could be upto 5 degrees only. It is further deposed that the claimant is facing difficulty to sit in cross legged position and cannot lift things over 5 kgs and thereby P.W.2 assessed 65% partial permanent disability, i.e, for fracture of left femur - 30%, for fracture of both bones - 20%, for restriction of movements at knee and ankle - 10% and for shortening - 5%. Ex.P.7 is the disability certificate, Ex.P.8 is X-ray and Ex.P.9 is the photo with negative.

9. It is seen from the evidence of P.W.2-Doctor that there is shortening of leg by 5% and hence, disability has been fixed at 65%. However, taking into consideration the documentary evidence of Ex.P.2-Discharge summary and Ex.P.7-Disability certificate, this Court is of the considered view that partial permanent disability which has resulted in functional disability will be only at 45%. The Tribunal has rightly adopted the multiplier of '18'. Though the Tribunal has fixed the monthly income of the claimant at Rs.4,500/-, the Tribunal has not awarded any amount towards future prospects and hence, as per the Judgment of the Honourable Supreme Court in the case of (National Insurance Company Limited Vs. Pranay Sethi), reported in 2017-13 SCALE 12, considering the age of the injured/claimant as 25 years at the time of the accident, 40% has to be added towards future prospects and accordingly, the compensation awarded by the Tribunal under the head of loss of income is re-assessed as Rs.6,12,360/- [Rs.4,500 + Rs.1,800 (40% of Rs.4,500) x 12 x 18 x 45% =Rs.6,12,360/-]

10. The Tribunal has not awarded any amount towards loss of amenities and hence, it is just and proper to award a sum of Rs.20,000/- under the said head. The Tribunal has not awarded any amount towards marital prospects and this Court is of the view that it is just and proper to award a sum of Rs.15,000/- under the said head. The Tribunal has awarded a sum of Rs.5,000/- under the head of transportation and the same is increased to Rs.10,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards extra nourishment and the same is increased to Rs.10,000/-. Under the head attendant charges, the Tribunal has awarded a sum of Rs.5,000/- and the same is increased to

Rs.10,000/-. Further, this Court awards a sum of Rs.15,000/- towards facial damage. A sum of Rs.500/- towards damage to clothes, a sum of Rs.1,61,585/- towards medical expenses and a sum of Rs.25,000/- towards pain and suffering awarded by the Tribunal are just and reasonable and hence they are confirmed.

11. Accordingly, the compensation amount awarded by the Tribunal is re-fixed as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of Income due to disability	Rs. 6,31,800/-	Rs. 6,12,360/-
2.	Transportation	Rs. 5,000/-	Rs. 10,000/-
3.	Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
4.	Damage to clothes	Rs. 500/-	Rs. 500/-
5.	Cost of attendant	Rs. 5,000/-	Rs. 10,000/-
6.	Medical expenses	Rs. 1,61,585/-	Rs. 1,61,585/-
7.	Pain and suffering	Rs. 25,000/-	Rs. 25,000/-
8.	Facial damage	- Nil -	Rs. 15,000/-
9.	Loss of amenities	- Nil -	Rs. 20,000/-
10.	Marital prospects	- Nil -	Rs. 15,000/-
	Total	Rs. 8,33,885/-	Rs. 8,79,445/-

12. In the result:

I. C.M.A.No.3359 of 2011 preferred by the Transport Corporation is dismissed and Cross.Obj.No.31 of 2012 preferred by the claimant is partly allowed and the award amount passed by the Tribunal is enhanced to Rs.8,79,445/- from Rs.8,33,885/-.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The appellant in C.M.A.No.3359 of 2011/Transport Corporation is directed to deposit the enhanced award amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit being made, respondent in C.M.A.No.3359 of 2011/cross objector is permitted to withdraw the enhanced award amount with proportionate interest, less the amount already withdrawn, if any.

V. The respondent in C.M.A.No.3359 of 2011/cross objector shall pay necessary Court fee, if any, on the enhanced compensation amount.

VI. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The III Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1 cc to M/s.S.S.Swaminathan, Advocate, S.R.No.14802

+1 cc to M/s.P.T.Saleem Fathima, Advocate, S.R.No.14485

C.M.A.No.3359 of 2011
and
Cros. Obj.No.31 of 2012

CP(CO)
SSM(01/10/2019).

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