

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2394 of 2013

Ramesh .. Appellant/ Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Dharmapuri. .. Respondent/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.01.2012 made in M.C.O.P.No.694 of 2009 on the file of the Motor Vehicle Claims Tribunal Additional District Judge, Krishnagiri.

For Appellant : Mr.M.Sriram

For Respondent : Mr.D.Venkatachalam

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed against the award dated 27.01.2012 made in M.C.O.P.No.694 of 2009 on the file of the Motor Vehicle Claims Additional District Judge, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No.694 of 2009 on the file of the Motor Vehicle Claims Additional District Judge, Krishnagiri. He filed the above claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.02.2009.

3. According to the claimant, that on 19.02.2009 at 23.30 hours, he was walking along the Sanamavu Road on the left side of the road along with others. When they are nearing opposite to Sanamavu co-operative Bank in Rayakottai road, the driver of the TNSTC bus bearing Regn.No.TN-29-N-1587 drove the said bus in a rash and negligent manner, at an uncontrollable speed, without sounding horn and without minding the rules of the road, at that time a lorry was going in front of the bus. The bus driver, while overtaking the said lorry in a rash and negligent manner, dashed against the persons who are pedestrians. Due to the said impact, the appellant and others sustained injuries. Therefore, the appellant has filed the above claim petition claiming compensation.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent to pay a sum of Rs.2,51,672/- as compensation to the appellant/claimant.

5. Not being satisfied with the award of the Tribunal made in M.C.O.P.No.694 of 2009, the appellant has come out with the present appeal for enhancement of compensation.

6. The learned counsel appearing for the appellant/claimant contended that the appellant was doing vegetable business and was earning a sum of Rs.6,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.4,500/- as notional income of the appellant. He has suffered 25% disability. Due to the disability, he could not continue his work as he was doing earlier. The Tribunal ought to have applied multiplier method for awarding compensation. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

7. Per Contra, Mr.D.Venkatachalam, learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal rightly fixed 25% of disability on the ground that 45% of disability assessed by P.W.2/Doctor is on the higher side and awarded a sum of Rs.50,000/- at the rate of Rs.2,000/- per percentage towards disability suffered by the appellant/claimant. The amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the respondent and perused the materials available on record.

9. It is the contention of the appellant/claimant that he sustained grievous injuries, viz., scalp and right ear lobe laceration was debrided and repaired. Heel pad avulsion was debrided and repaired by plastic surgeon. ORIF right medial malleolus fracture was done using two partially threaded cancellous screws. Immobilisul with below knee pop. The petitioner is not able to sit, stand or walk freely. He is not able to lift any object. He is feeling always tired. He is not able earning power. He is not able to do his work as he was doing before. He could not able to sit or squat properly. He is getting head-ache and giddiness often. P.W.2/Doctor has assessed the disability as 45%. Ex.P6/Disability certificate was marked to prove the injuries sustained by the appellant. Based on the documentary evidence, the Tribunal reduced the disability of the appellant as 25% and awarded a sum of Rs.50,000/- (Rs.25 X Rs.2,000/-) towards disability at the rate of Rs.2,000/- per percentage. The appellant has not produced any document to show that he suffered functional disability and there is a loss of earning capacity and therefore, the percentage method applied by the Tribunal is correct. The accident is of the year 2009 and the compensation awarded by the Tribunal towards disability is proper and the same does not warrant any interference by this Court.

10. The Tribunal awarded a sum of Rs.27,000/- towards partial loss of income and the same is confirmed by this Court. The appellant was taking treatment in hospital from 20.02.2009 to 02.03.2009 for 10 days. The Tribunal has not awarded any amount towards transportation and loss of clothes. A sum of Rs.10,000/- and Rs.3,000/- are granted towards transportation and loss of clothes. The Tribunal has awarded a sum of Rs.10,000/- and Rs.10,000/- towards pain and suffering & loss of amenities and the same are meagre. Considering the nature of injuries sustained by the appellant, a sum of Rs.20,000/- and Rs.15,000/- are awarded towards pain and suffering & loss of amenities respectively. The amounts awarded by the Tribunal towards medical bills, attenders expenses and extra nourishment are just and reasonable and hence, the same are hereby confirmed. Thus, the amount awarded by the Tribunal is modified as follows:

SL. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Temporary disability	50,000/-	50,000/-	Confirmed
2.	Partial loss of income	27,000/-	27,000/-	Confirmed

3.	Medical bills	1,48,672/-	1,48,672/-	Confirmed
4.	Nutritious food	3,000/-	3,000/-	Confirmed
5.	Attenders expenses	3,000/-	3,000/-	Confirmed
6.	Pain & suffering	10,000/-	20,000/-	Enhanced
7.	Loss of amenities	10,000/-	15,000/-	Enhanced
8.	Transportation	-	10,000/-	Granted
9.	Loss of clothes	-	3,000/-	Granted
	Total	Rs.2,51,672/-	Rs.2,79,672/-	Enhanced by Rs.28,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,51,672/- is hereby enhanced to Rs.2,79,672/- with interest at the rate of 9% per annum from the date of petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the enhanced award amount with interest and costs, now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Motor Vehicle Claims Tribunal Additional District Judge, Krishnagiri.

Copy to:

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

+1cc to Mr.D.Venkatachalam , Advocate SR.No. 104319

+1cc to Mr.Mukund R.Pandian , Advocate SR.No. 104080

C.M.A.No.2394 of 2013

A.SK(23/09/2020)