

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.01.2019
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.441 of 2011 and
M.P.No.1 of 2011 and
M.P.No.1 of 2013

Karnataka State Road Transport Corporation,
Represented by its Managing Director,
Pathikonda, III Depot,
Bangalore.

... Appellant/1st Respondent

..Vs..

Anwar @ Anwar Basha

...Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 09.11.2006 in M.C.O.P.No.621 of 1999 on the file of the VI Judge, Small Causes Court, Madras.

For Appellant : Mr.T.Thiyagarajan

For Respondent : Ms.Y.Jayanthi Bhaskar
for Mr.J.Mahalingam

JUDGMENT

The appellant Karnataka State Road Transport Corporation, Pathikonda, III Depot, Bangalore, represented by its Managing Director has filed the present appeal questioning the quantum of compensation awarded by the VI Judge, Court of Small Causes, Chennai for the road accident that took on 06.10.1998.

2.The respondent filed M.C.O.P.No.621 of 1999 under Section 166 of Motor Vehicles Act and Rule 3 of M.A.C.T. Rules before the VI Court of Small Causes, Chennai seeking compensation of Rs.4,50,000/- for the injuries sustained by him in a road accident that took place on 06.10.1998.

3.According to the respondent/claimant, on 06.10.1998, he was travelling as a passenger in a bus bearing Registration No. KA 01 6321 belonging to the present appellant and at about 09.30 p.m., the driver of the bus drove the bus rashly and negligently

near Palamaner, as a result of which, the bus went off the road causing grievous injuries to him. It is also contended by him that he was aged about 36 years on the date of the accident, working as a Manager in a private concern at Chennai, earning a sum of Rs.6,000/- per month.

4.The present appellant contested the claim petition by filing a counter. The learned VI Judge, Court of Small Causes, Chennai after analysing the evidence on record, awarded a compensation of Rs.1,67,000/- to the respondent/claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

5.Mr.T.Thiyagarajan, learned counsel appearing for the appellant would contend that the discharge summary (Ex.P8) and medical bills (Ex.P9) issued by Dr.L.Prakash (P.W.3) are not genuine in nature which is clear from the fact that the address of the hospital is printed as 241-F, Kilpauk garden road, Kilpauk, Chennai- 600 010 in the year 1998 when the city of Madras was re-christened as Chennai only in the year 2002. His further contention is that a consolidated statement of medical expenses (Ex.P9) is issued which is contrary to the practice adopted by many hospitals at Chennai. It is also his contention that based on discharge summary (Ex.P8) and medical bills (Ex.P9), Dr.N.Saichandran (P.W.2) has assessed the partial permanent disability as 45% and therefore, the award passed by the tribunal cannot be sustained.

6.Per contra, the learned counsel appearing for the respondent/claimant would contend that the tribunal has awarded a very meagre amount of Rs.15,000/- towards loss of earning capacity and that multiplier method has not at all been applied by the tribunal especially when the respondent/claimant has sustained fracture of right humerus bone.

7.The award passed by the tribunal under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Loss of income	Rs.15,000/-
2.	Extra Nourishment	Rs.2,000/-
3.	Transport to hospital	Rs.2,000/-
4.	Medical Expenses	Rs.47,937/-
5.	Pain and sufferings	Rs.15,000/-
6.	Partial permanent disability	Rs.45,000/-
7.	Loss of earning power	Rs.40,000/-
Total		Rs.1,66,937/-

The total compensation of Rs.1,66,937/- was rounded off to Rs.1,67,000/- by the tribunal.

8.A perusal of the orders passed by the tribunal clearly shows that the tribunal did not consider the discharge summary (Ex.P8) issued by Dr.L.Prakash (P.W.3) and also the bills (Ex.P9). Infact, the tribunal has awarded only a sum of Rs.47,937/- towards medical expenses, considering the treatment taken by him in MIOT Hospital, Chennai as evidenced by Medical bills (Ex.P4 (s)). The respondent/claimant has sustained a fracture of the right humerus bone and it is also evident from the records that he was surgically treated. Therefore, awarding compensation of Rs.15,000/- towards pain and sufferings, Rs.2,000/- towards extra nourishment and Rs.15,000/- towards loss of income cannot be faulted with.

9.Dr.Saichandran (P.W.2) has also considered the discharge summary (Ex.P3) issued by MIOT hospital before assessing the partial permanent disability as 45%. The tribunal has infact awarded Rs.1,000/- per percentage towards partial permanent disability. Since there is no functional disability, adopting multiplier method in the instant case is not warranted as per the decision of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343.

10.However, the tribunal has awarded a sum of Rs.40,000/- towards loss of earning power. In the decision in Cholan Roadways Corporation Limited, Kumbakonam vs. Ahmed Thambi and others reported in 2006 (4) CTC 433, a full bench of this court has held that

"In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the Tribunal, while awarding damages, should itemise the award under each of the head namely, pecuniary losses and non-pecuniary losses. In the non-pecuniary losses the tribunal shall consider (a) pain and suffering, (b) loss of amenity, (c) loss of expectation of life, hardship, mental stress, etc (d) loss of prospect of marriage and under the head pecuniary losses, the tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earning, if any from the date of accident till the date of trial. When loss of earning capacity is compensated as also the non-pecuniary losses

under (a) to (d), permanent disability need not be separately itemised."

11. In view of the above decision, a sum of Rs.40,000/- awarded towards loss of earning power is not sustainable and therefore, the total compensation awarded by the tribunal is reduced to Rs.1,27,000/- (Rs.1,67,000 - Rs.40,000). As far as the award passed under other heads are concerned, this court feels that there is no need to disturb the same.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) The award amount is reduced from Rs.1,67,000/- to Rs.1,27,000/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellant is directed to deposit the entire compensation amount (less the amount already deposited by them) together with interest at the rate of 7.5% per annum on Rs.1,27,000/- from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.621 of 1999, dated 09.11.2006, on the file of the VI Judge, Small Causes Court, Chennai within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondent/claimant is at liberty to withdraw the entire amount after following due procedure of law.

(v) If the amount already deposited by the appellant is in excess of the amount awarded by this court, the appellant is at liberty to withdraw the same.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mbi

To

Motor Accidents Claims Tribunal,
VI Small Causes Court,
Chennai.

+1cc to Mr.T.Thiyagarajan, Advocate sr.no.875

+2ccs to M/s.J.Mahalingam, Advocate sr.no.697

C.M.A.No.441 of 2011 and
M.P.No.1 of 2011 and
M.P.No.1 of 2013

rsi(co)
nr 25/03/2019



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