

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :09.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.3170 of 2012

G.Panneerselvam

... Appellant

Versus

1.The Tamil Nadu State Transport Corpn
(Div.1) ltd,rep by its Managing Director,
Villupuram District

2.Tamil Nadu State Transport Corporation (Salem Divi.)
Ltd., rep by it's Managing Director
(2nd respondent exparte before the Tribunal) ...Respondents

Prayer: Civil Miscellaneous Appeal has been filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 28.08.2008 made in M.C.O.P.No.1299 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, (Fast Track Court No.3), Chennai.

For Appellant : Mr.V.Mohan Choudary
For R1 : Mr.S.V.Vasantha kumar
For R2 : Exparte

JUDGMENT

The Claimant is the appellant herein. The present Civil Miscellaneous Appeal has been filed as against the award dated 28.08.2008 made in M.C.O.P.No.1299 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, (Fast Track Court No.3), Chennai, seeking enhancement of compensation.

2.The gist of the case is that on 13.12.2002, at about 19.20 hours, when the claimant was riding the motorcycle bearing Regn.No.TN-22-R-0289 slowly and cautiously in GST Road from south to north, at that time, the TNSTC bus bearing Regn.No.TN-27-N-1416 was driven by its driver in a rash and negligent manner on the same road behind and knocked down the said motorcycle, as a result of which the claimant sustained grievous injuries. A case was registered by the Police against the driver of the bus. Therefore, the claimant filed the above said claim petition, claiming compensation of Rs.3,00,000/-.

3.The first respondent herein has filed a counter statement and specifically alleged that the rider of the two wheeler was liable to the accident and contested the case.

4.The second respondent remained exparte before the Tribunal.

5.Before the Tribunal, the injured claimant examined himself as PW.1 besides examining one Dr.K.J.Mathiyazhagan as PW.2 and fifteen documents as Ex.P1 to P15 were marked. On the side of the respondents, two witnesses were examined as RW.1/driver of the bus & RW.2/conductor of the bus and one document was marked as Ex.R1/copy of G.O and report.

6.Based upon the above said oral and documentary evidence, it appears that the Tribunal has come to the conclusion of fixing 50 : 50 negligence on the part of the both the driver of the bus and the rider of the motorcycle, as per the FIR and which was marked as Ex.P1 and there is no proof, whether the charge sheet has been filed or not and which has not been adduced before the Tribunal. Furthermore, by the evidence of PW.1 and also from the cross examination of RW.1, the driver of the bus, raising sound horn, proceeded over taking the motorcycle, but the rider of the motorcycle did not response and ride the motorcycle without following the traffic rules, therefore, because of the rider of the two wheeler, the accident has taken place. Taking into consideration the answer elicited in the cross examination of PW.1 coupled with the oral evidence of the driver of the transport corporation bus that the bus, hit the motorcycle from the behind and fixed the negligence on the part of the both driver of the bus as well as the rider of the motorcycle.

7.After analysing the oral and documentary evidence adduced before the Tribunal, this Court is of the considered view that the negligence is fixed at 25 % to the rider of the motorcycle and 75% to the driver of the transport corporation bus. Accordingly, the finding of the Tribunal viz., 50 : 50 negligence shall stand modified by this Court, and held that the accident has taken place due to rash and negligence of both the driver of the vehicles. Therefore, the transport corporation is liable to pay 75% compensation, which is hereby re-assessed.

8.This Court is cognizant of the fact that Ex.P14/disability certificate was not issued by the doctor, who gave treatment to the claimant. It is stated that immediately, after the accident, the claimant had taken treatment in Government Hospital at Chenagalpet and subsequently, he had taken treatment in Sri Ramachandra Hospital from 14.12.2002 to 25.12.2002 for Cerebral contusion, Sub Arachnoid Haemorrhage, fracture right mastoid and right parietal bone, fracture right

clavicle, right LMN facial Palby and advised to review after one week, which clearly shows that the claimant had taken treatment again in Sri Ramachandra Hospital as an out-patient from 03.01.2003 to 30.04.2003. Thereafter, he took treatment at Puthur, which was verified by Ex.P5/Puthur O.P. Chit. Subsequently, he took further treatment in Hindu Mission Hospital, which were clarified by Ex.P4/O.P. Chit, P7 to P10. In connection with the treatment undergone Ex.P11 & P15/X-rays and Ex.P12 & P13/CT Scans were marked. As per Ex.P6 & Ex.P9/medical bills, the claimant had incurred medical expenditure of Rs.26,728.15/- + Rs.1,520/- = Rs.28,248.15/- (round off to Rs.28,250/-) and the same was granted by the Tribunal. PW.2/Doctor, who assessed the disability at 35%, however, the Tribunal without assigning any reason has taken the disability at 30%.

9.Considering the nature of the injuries, this Court fixes the disability at 35% and awarded Rs.70,000/- (i.e.,Rs.2000 per percentage). Having regard to the nature of injuries and the period of treatment undergone by him at various hospitals, it would be sufficient to enhance the amount awarded under the head pain and suffering from Rs.5,000/- to Rs.10,000/-. Taking note of the period of hospitalization, this Court feels to enhance the Transportation charges from Rs.3,000/- to Rs.10,000/-. Accordingly a sum of Rs.2,000/- has to be enhanced to Rs.10,000/- towards extra-nourishment. Based upon the Ex.P6, P8, P9/medical bills the award amount of Rs.28,250/- awarded by the Tribunal is hereby confirmed. Consequently, the Tribunal did not award any amount towards Attender charges and Loss of amenities, hence, this Court granting a sum of Rs.8,000/- and Rs.7,000/- respectively under the heads of Attender charges and Loss of amenities. Considering his age, avocation and the date of the accident, his notional income is fixed at Rs.4,500/- for the period of 4 months treatment, which is arrived at Rs.18,000/- towards loss of income. Break-up details of the enhanced/modified compensation amounts are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.60,000/-	Rs.70,000/-
Loss of income	-	Rs.18,000/-
Medical expenses	Rs.28,250/-	Rs.28,250/-
Pain and suffering	Rs.5,000/-	Rs.10,000/-
Conveyance expenditure	Rs.3,000/-	Rs.10,000/-
Extra-nourishment	Rs.2,000/-	Rs.10,000/-
Attender charges	-	Rs.8,000/-
Loss of amenities	-	Rs.7,000/-
Total	Rs.98,250/-	Rs.1,61,250/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.98,250/- is hereby enhanced to Rs.1,61,250/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(ii) The second respondent/Transport corporation is directed to deposit 75% (i.e. Rs.1,20,937.50/-) amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the appellant/claimant is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn.

(iv) The second respondent/Transport corporation is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.1299 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, (Fast Track Court No.3), Chennai, if the entire award amount has already been deposited by them. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Additional District Judge,
(Fast Track Court No.3), Chennai.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+2cc to Mr.V.Mohan Choudary, Advocate, S.R.No. 34457
+1cc to Mr.S.V.Vasanth Kumar, Advocate, S.R.No.34654

CMA.No.3170 of 2012

VSN II (CO)
GN(23/07/2019)