

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3486 of 2013

Kannan

...Petitioner

Vs

1. S.Selvaraj

2. The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
No.37, MTP Road,
Coimbatore.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.251 of 2008 on the file of the Motor Accident Claims Tribunal Cum Subordinate Court, Bhavani, Erode District, dated 31.03.2011 and for enhancement of compensation.

For Petitioner : Mr.C.Kulanthaivel

For Respondents: Mr.K.J.Sivakumar
for R2

R1 - Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 31.03.2011 made in M.C.O.P.No.251 of 2008 on the file of the Motor Accident Claims Tribunal Cum Subordinate Court, Bhavani, Erode District.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal.

3.The appellant herein is the claimant in M.C.O.P.No.251 of 2008 on the file of the Motor Accident Claims Tribunal Cum Subordinate Court, Bhavani, Erode District. He filed the above said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.07.2008.

4.The case of the appellant is that on 07.07.2008, around 12.30 PM, when he was riding a Yamaha Motor Cycle bearing Reg.No.TN-36-J-8485 with a pillion rider, from Komarapalayam to Salem in NH-47 Highway near Valayakarnoor Corporation Bank in the extreme left side, a TNSTC Bus bearing Reg.No.TN-38-N-1546 driven by the 1st respondent driver in a rash and negligent manner without following the traffic rules, hit against the claimant and due to said accident, the appellant sustained grievous injuries and he was admitted to a Government Hospital at Komarapalayam and later on, admitted at National Hospital, Erode for further advance treatment. He had sustained fractures in the right leg knee and back side of the head and he was taking treatment for almost one year. At the time of accident, he was aged about 21 years and doing a Mesan job and was earning not less than Rs.6,000/- per month.

5.Per contra, the learned counsel appearing for the 2nd respondent relied on the counter filed by the 2nd respondent and stated that there is no evidence to show that he had underwent any surgery and incurred disablement and claiming an exorbitant amount of Rs.3,00,000/-, is not proper and valid. The learned counsel would further submit that the appellant had voluntarily hit against the bus, by driving his motorcycle in a rash and negligent manner and invited the accident and the 1st respondent is not responsible for the said accident and the main contention of the learned counsel was that the claimant did not sustain any permanent disability and no surgery has been underwent and hence, he prays for dismissal of the present appeal.

6.Heard the learned counsels appearing for the appellant as well as the second respondent and perused the materials available on record.

7.From the materials on record, it is seen that the Tribunal has failed to consider that the evidence of PW1 and PW2 and the documents P1 to P5 marked by the appellant/ claimant. reduced the percentage of disability as assessed by PW.2 and PW.3 / Doctors from 30% to 20%. The appellant suffered 30% disability due to the injuries sustained by him in the accident and the reason given by the Tribunal for reducing the percentage of disability is not correct. Hence, the appellant is entitled to compensation for 30% of disability at the rate of Rs.2,000/- per percentage i.e., Rs.60,000/- (30 X 2,000). The Tribunal has awarded a sum of Rs.2,000/- towards transport expenses and Rs.3,000/- towards nutrition and the same are meager and are hereby enhanced to Rs.5,000/-, each. The Tribunal has not awarded any amount towards loss of amenities and discomfort and also attendant charges. Considering the nature of injuries and

disability suffered by the appellant, a sum of Rs.5,000/- each is granted towards attendant charges and loss of amenities. The accident occurred on 07.07.2008. The Tribunal has awarded a sum of Rs.10,000/- towards loss of earning capacity. The appellant was doing a Mesan job and was earning a sum of Rs.6,000/- per month. Considering the job of the appellant and also the day to day affairs, the amount awarded by the Tribunal is enhanced to a sum of Rs.30,000/- for the loss of earning capacity. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	40,000/-	60,000/-	enhanced
2.	Loss of earning capacity	10,000/-	30,000/-	enhanced
3.	Pain and sufferings	25,000/-	25,000/-	confirmed
4.	Transport Expenses	2,000/-	5,000/-	enhanced
5.	Nutrition	3,000/-	5,000/-	enhanced
6.	Loss of amenities and Discomfort	NIL	5,000/-	granted
7.	Attender charges	NIL	5,000/-	granted
8.	Medical expenses	20,000/-	20,000/-	confirmed
9.	Loss articles	1,000/-	1,000/-	confirmed
	Total	Rs.1,01,000/-	Rs.1,56,000/-	enhanced by Rs.55,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,01,000/- is hereby enhanced to Rs.1,56,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The first respondent is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of

a copy of this judgment. On such deposit, the appellant 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-III)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal
Bhavani,
Erode District.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+2cc to Mr.K.J.Sivakumar, Advocate, S.R.No. 102591
+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No. 101735

C.M.A.No.3486 of 2013

GP (CO)
GN (22/09/2020)

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