

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.464 of 2013

M.Balakrishnan

... Appellant/Petitioner

Vs

Metropolitan Transport Corporation (Chennai Division) Ltd., rep. by its Managing Director, Pallavan Salai, Chennai 600 002.

... Respondents/Respondents

PRAYER :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 24.09.2012 made in MACT.O.P. No.4993 of 2010 on the file of the V Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellant : Mr.R.Kalaiarasan

For Respondent : Mr.S.Sivakumar for Sole respondent

J U D G M E N T

Claimant in M.C.O.P.No.4993 of 2010 on the file of the V Small Causes Court (Motor Accident Claims Tribunal), Chennai is the appellant.

2. In respect of injuries sustained in a bus accident bearing Reg.No.TN 01 N 4090 that took place on 16.08.2010, the appellant/claimant has claimed a compensation of Rs.6,00,000/-.

3. The Tribunal after considering the materials and evidence available on record had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the respondent / Transport Corporation. The finding given by the Tribunal is based on valid materials and evidence. The Tribunal passed an award for Rs.1,53,700/- as against the claim of Rs.6,00,000/- and directed the Transport Corporation to pay the same as compensation to the appellant. Aggrieved over the same, the appellant/claimant has

filed this appeal, challenging against the quantum of compensation awarded by the Tribunal.

4. Heard the learned counsel for the appellant and the learned counsel for the respondent.

5. On the side of the claimant, witnesses P.W.1 and P.W.2 were examined and documents Ex.P1 to Ex.P8 were marked. P.W.1 is the claimant. P.W.2 is Dr.K.J.Mathiazhagan P.W.2, and documents Ex.P1 Copy of FIR, Ex.P2 Discharge summary, Ex.P3 Medical Bills, Ex.P4 Medical Bills, Ex.P5 Photographs with CD, Ex.P6 X-ray film, Ex.P.7 Disability Certificate issued by PW2 and Ex.P8 X-ray Film and on the side of the Transport Corporation, one K.Venugopal (conductor) was examined as R.W.1 and no documents were marked.

6. The learned counsel appearing for the claimant would contend that the claimant sustained fracture neck of femur right for which valgus osteotomy proximal femur was done at St.Isabel's Hospital and treated as inpatient from 16.08.2010 to 27.08.2010 and underwent surgery with implantations, implantations are still there, pain and stiffness over right hip, right hip movements are restricted and the petitioner has got difficulty in walking fast, climbing steps, sitting cross legged or squatting and do his cycle repair work. Dr.K.J.Mathiazhagan (PW2) had assessed the partial permanent disability suffered by the claimant as 45%. The tribunal has awarded an amount of Rs.1,53,700/- as compensation to the claimant. It is contended that the claimant is a Proprietor of M/s.Bala Cycle shop and on account of the accident he is not able to sit cross legged and do his work and apart from that he finds difficult in climbing steps and walking. His grievance is that the claimant was not able to attend his work atleast for a temporary period of three months and that the pecuniary loss would be enhanced from Rs.13,500/- to Rs.19,500/-. He also produced the photograph of the claimant before this Court.

7. Per contra, the learned counsel appearing for the Tamil Nadu State Transport Corporation Limited would contend that the tribunal has awarded a just compensation of Rs.1,53,700/-, taking into consideration various aspects and the same need not be disturbed at this juncture.

8. Since there is no supporting evidence to show that the claimant was earning Rs.10,000/- per month as stated in the claim petition at the time of accident during the year 2010, the Tribunal has fixed Rs.4,500/- per month and awarded Rs.13,500 under the head loss of income for three months. On account of the accident, the claimant would not have been in a position to attend his regular work atleast for a period of three months and

accepting the contention of the learned counsel for the appellant this Court is inclined to enhance the loss of income from Rs.4,500/- to Rs.6,500/- and for three months at Rs.19,500/- (Rs.6,500/- x 3 = Rs.19,500/-)

9. Since this Court feels that the amount awarded by the Tribunal under other heads are just and proper the same is confirmed. Hence the total compensation payable to the claimant is as hereunder.

S. No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of income for three months at the rate of Rs.6,500/-p.m. of earning capacity	Loss of income for three months at the rate of Rs.4,500p.m. Rs. 13,500	Rs. 19,500/-
2.	Transportation	Rs. 5,000/-	Rs. 5,000/-
3.	Extra nourishment	Rs. 5,000/-	Rs. 5,000/-
4.	Damages to clothes	Rs. 1,000/-	Rs. 1,000/-
5.	Medical expenses	Rs. 14,192/-	Rs. 14,192/-
6.	Pain and sufferings	Rs. 25,000/-	Rs. 25,000/-
7.	Disability at 45% at the rate of Rs.2,000/- per centage	Rs. 90,000/-	Rs. 90,000/-
Total		Rs.1,53,700/-	Rs.1,59,692/-

10. The Transport Corporation is directed to deposit the entire amount awarded by this Court with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant bank account through RTGS within a period of two weeks thereon.

The claimant is directed to pay the requisite court fee, if

any, within a period of one week from the date of receipt of a copy of this order.

11. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.1,53,700/- is enhanced to Rs.1,59,692/-. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The V Judge, Small Causes Court
(Motor Accidents Claims Tribunal)
Chennai.
2. The Managing Director,
Metropolitan Transport Corporation
(Chennai Division) Ltd.,
Pallavan Salai, Chennai-600 002.

+1cc to Mr.S.Sivakumar, Advocate, S.R.No.12642

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.12621

C.M.A.No.464 of 2013

SSD(CO)
CS/22/07/2019

सत्यमेव जयते

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