



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

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The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.553 of 2013

N. Gunaseelan

... Appellant/Petitioner

Vs.

Metropolitan Transport Corporation Ltd.,
rep. by its Managing Director.

... Respondent/Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 25.10.2010, in M.C.O.P.No.128 of 2006, passed by the Motor Accident Claims Tribunal (II Small Causes Court), Chennai.

Appearance:

For Appellant	:	M/s. Ramya V. Rao
For Respondent	:	Mr.S.Sivakumar

JUDGMENT

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal cum II Judge, Court of Small Causes, Chennai, (henceforth, referred to as 'the Tribunal') in and by its award dated 25.10.2010, in M.C.O.P.No.128 of 2006, the present appeal has been filed by the claimant/injured, who was 53 years of age, at the time of the accident and sustained injuries in an unfortunate bus accident.

2. Since the appeal has been filed questioning the quantum of compensation alone, it is not necessary for this Court to deal with the other aspects of the award passed by the Tribunal.

3. On 28th June, 2005, about 10.00 hours, when the claimant N.Gunaseelan was attempting to get inside a bus, bearing Registration TN-01-N- 1926, at Pallavan Salai, near M.T.C. Depot, the driver of the bus driven the same in a rash and negligent manner, and crashed the left side of the another bus, which was standing on the left side of the road. As a result thereof, the claimant fell down from the Bus and sustained grievous injuries. Since the accident occurred due to the rash and negligent driving of the driver of the Bus, the respondent, Metropolitan Transport Corporation Ltd., the owner of the bus is



liable to pay compensation on behalf of its driver.

4. The claimant was working as Manager in Punjab Nationalized Bank, Sowcarpet, Chennai, and was earning a sum of Rs.24,614/- per month. Since he sustained injuries due to the aforesaid accident, he instituted the Original Petition, in M.C.O.P.No.128 of 2006, claiming compensation, in a sum of Rs.15,00,000/-.

5. The respondent, owner of the bus contested the Claim Petition by filing a counter, inter alia contending that, it was the claimant, who contributed to the accident, inasmuch as, he emerged from the back side of another bus, which was standing due to break down and tried to board into the moving bus, and this has led to the accident. Therefore, the Transport Corporation cannot be mulcted with any liability to pay compensation to the claimant. It was further stated that the compensation amount claimed by the claimant is excessive and exorbitant. Therefore, the Transport Corporation prayed for dismissal of the claim petition.

6. On behalf of the claimant, two witnesses were examined, viz., Gunasekar (P.W.1) and Doctor (P.W.2) and 20 documents were got marked as Exs.P.1 to P.20. None was examined on behalf of the respondent, Metropolitan Transport Corporation Ltd., and no documents were exhibited either.

7. The Tribunal, on appreciation of both oral and documentary evidence, has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Bus belonging to the respondent. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.5,80,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, as compensation.

8. Finding the compensation amount as insufficient, the present Appeal has been filed by the claimant/appellant, as stated above.

9. The learned counsel appearing on behalf of the appellant/claimant submitted that insofar as the compensation awarded by the Tribunal under all other heads are concerned, she has no grievance over the same and her only grievance is that the Tribunal has awarded only a sum of Rs.1,20,000/- towards Loss of Earning during treatment, which forced him to take leave for 145 days but failed to award any compensation towards loss of income due to delay in promotion, for, only due to the medical treatment underwent by the claimant for those 145 days,



the claimant was unable to relish the benefit of the promotional order. The learned counsel further submitted that, infact, the Tribunal, while determining the compensation under the head "Pain and Suffering" clearly observed that the claimant lost his promotional opportunities as he was not in a position to join duty pursuant to the promotional order/Ex.P.14, passed by the Employer, due to the injuries sustained by the claimant in the accident, as a result of which, he lost his seniority. She, therefore, submitted that the Tribunal though recorded such findings with regard to the claimant's losing his promotional avenues, which was due to the accident, failed to award any compensation towards loss of income due to the delay in promotion, and if this aspect of the matter is taken into consideration, then, the loss of income incurred by the claimant due to delay in promotion works out to Rs.2,40,000/-. In support of her contention, the learned counsel also drawn the attention of this Court to the following documents:-

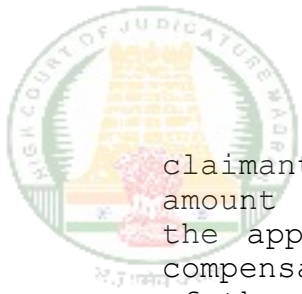
- a) Ex.P.14: Promotion Order.
- b) Ex.P.15: Promotion Debarred Letter.
- b) Ex.P.16: Notification for seniority list.
and
- c) Ex.P.17: Circular copy

10. The learned counsel further submitted that, excluding two documents, viz., Ex.P.19 (Disability Certificate) and Ex.P.20 (X-ray), which were marked through P.W.2/Doctor, all other documents were marked through P.W.1, in support of the claim and among such documents, the aforementioned four documents would prove that the only due to the accident, the claimant lost his promotional avenue and he was debarred for consideration of promotion for two years. Further, the appellant/claimant deposed that due to the delay in promotional opportunities, he has incurred a loss about Rs.2,40,000/-. Therefore, the learned counsel prayed for modification of the award passed by the Tribunal, in that regard.

11. The learned counsel appearing for the respondent fairly admitted that it was only due to the accident, the claimant was not in a position to join duty immediately when the promotion order was passed in his favour, and this aspect though taken note of by the Tribunal, but, failed to award any compensation towards loss of income due to delay in promotion.

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

13. As rightly pointed out by the learned counsel for the



claimant/appellant, the Tribunal ought to have awarded some amount towards the Loss of Income due to delay in promotion of the appellant. In fact, the Tribunal, while determining the compensation under the head "Pain and Sufferings" has taken note of the said aspect and made certain observations in that regard. For better appreciation, the relevant portion from the award passed by the Tribunal is extracted hereinbelow:-

" ...

The petitioner was working as a Manager in Punjab National Bank, Chennai. He was forced to take leave for 145 days from 28.06.2005. The petitioner claims that his promotional opportunities has been affected and also seniority rank has also changed due to the accident. Because of the fracture and treatment for the same, he was not in a position to join the duty as directed by the Bank Authorities. Ex.P.14, is the promotional order, dated 12.08.2005 and the petitioner has been directed to join the new assignment on 22.08.2005, in Chattisgarh. Ex.P.15, is the letter from the Functional Manager of his Bank debarring the petitioner for consideration of his promotion for two years. Perusal of the same reveals that the Bank has given extension of time till 22.10.2005 for the petitioner to join the assignment in Chattisgarh Zone. But the petitioner has not joined as directed and hence, he has been debarred. Therefore, the injuries sustained by the claimant in the accident forced him to take leave upto 21.11.2005. ..."

14. Thus, on a perusal of the above, it is seen that the Tribunal rightly observed that the claimant lost his promotional avenue due to the medical treatment underwent by him on account of the accident and also lost his seniority and was debarred for consideration of promotion for two years. Further, the appellant/claimant/P.W.1 deposed that due to the delay in promotional opportunities, he incurred loss about Rs.2,40,000/-. However, the Tribunal miserably failed to award any compensation towards loss of income due to the delay in promotion. Therefore, this Court is inclined to award a sum of Rs.2,40,000/- towards loss of income incurred by the appellant due to the delay in promotion. Consequently, the total compensation amount of Rs.5,80,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.8,20,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Insofar as compensation awarded by the Tribunal



under other heads are concerned, the same remains unaltered.

15. In the result,

(i) The Civil Miscellaneous Appeal is allowed.

(ii) The respondent, Metropolitan Transport Corporation Ltd., is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any, failing which, the Chief Financial Officer or Managing Director shall appear before this Court on 04.06.2019. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

The Presiding Judge
The Motor Accident Claims Tribunal
II Small Causes Court, Chennai.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

C.M.A.No.553 of 2013

GMR(CO)
SP(23/09/2019)