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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02.07.2019

JUDGMENT PRONOUNCED ON : 10.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.548 of 2015

Gopal @ Gopalakrishnan

Appellant/Petitioner

Vs

The Tamil Nadu State Transport
Corporation (VPM-DIV-II) Limited,
Represented by its The Managing Director,
Villupuram.

Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.54 of 2009 dated 28.06.2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Arni.

For Appellant : Mr.P.Satheesh kumar

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.54 of 2009 dated 28.06.2013, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Arni. The claimant is the appellant herein, who has preferred the appeal for enhancement of compensation awarded by the Tribunal.

2. The brief case leading to the claim petition is that on 04.12.2008, at about 06.45 p.m., when the injured was riding his TVS XL motorcycle bearing Registration No. TN 25 V 7223 on the left side of the road, at Arni to Vellore. At that time, the TNSTC bus bearing Registration No. TN 23 N 1336 came in a rash and negligent manner, hit against the injured. As a result, the appellant/claimant sustained injuries and also sustained loss of earning, pain and sufferings, Medical expenses. Hence, the appellant/claimant claimed a sum of Rs.3,00,000/- as compensation for the said loss.



3.The respondent/ Transport Corporation denied the rash and negligent driving of the driver of the Bus. It is further contended by the respondent that the said respondent bus was carefully driven by its driver and after taking passengers at SLS Mill Bus stop at 50 feet, the appellant/claimant came in the opposite direction, while trying to over take TATA ACE van, hit at the right back of the bus and thereby, he sustained injury and hence, the accident occurred only due to the negligence on the part of the appellant/claimant. Hence, there is no negligence on the part of the driver of the bus. The other averments made by the respondent is that the owner and Insurance Company of the two wheeler were not made as necessary parties. Further, the other aspects relating age, occupation, income and injuries sustained by the petitioner and medical expenses incurred by him are also denied.

4.The Tribunal after analysing the evidence and documents placed before the same, has fixed the negligence on the part of the driver of the bus. While determining the compensation, the Tribunal has verified the Wound Certificate(Ex.P6), the injury and age of the claimant and the disability deposed by the witness and awarded a sum of Rs.72,000/- as compensation, under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Permanent disability	59,400.00
2.	Pain and suffering	10,000.00
3.	Transportation	2,000.00
4.	Loss of belongings	1,000.00
Total		72,400.00

5.Aggrieved against the said award, the appellant/claimant has preferred this appeal for enhancement of compensation. In the ground of the appeal, the appellant/claimant contended that the Tribunal without considering documentary and oral evidence adduced by the appellant, has awarded a very meager sum as compensation, which is not reasonable. The Tribunal has also not considered the medical bills produced by the appellant/claimant as Ex.P3 and Ex.P5. The appellant/claimant sustained fracture in the right hand middle finger and left leg. Apart from that, there was a fracture in the skull and was treated as in-patient from 04.12.2008 to 10.12.2008 and the appellant/claimant who was doing self weaving business could not continue his work as earlier and incurred a 'loss of earnings' and the compensation towards loss of earnings was not properly considered by the Tribunal.



6.The other grievance raised by the appellant/claimant is that the sum awarded for disability is also on the meager side. Further, the Tribunal has failed to award any compensation towards 'Extra nourishment and attender's charge'. Eventhough, the injuries are permanent in nature, the sum awarded towards 'pain and sufferings' is also on the meager side. It is vehemently contended by the appellant/claimant that the Tribunal while fixing the disability has not considered the fact that the claimant was aged about 52 years and doing self weaver business, only, because of the fracture in his finger and the injury sustained in the head, he could not restore his original health and his future has been very much affected. But the Tribunal has taken the disability only at 15% and assessed the said loss at Rs.59,400/- which is very much on the meager side. Yet another contention raised by the appellant/claimant is that the award passed by the Tribunal in toto is low, insufficient and unjustified.

7. Heard, Mr.P.Satheesh Kumar, learned counsel appearing for the appellant/claimant and Mr.K.J.Sivakumar, learned counsel appearing for the respondent/Transport Corporation.

8.On hearing both sides and perusing all the records, it is observed that the appellant/claimant sustained severe injuries due to the accident. Ex.P2 is the discharge summary issued by the Christian Medical College, Vellore, in which, it has been stated that the appellant/claimant was admitted in the hospital as an in-patient from 04.12.2008 to 10.12.2008. The Investigation reveals the fact that "X-ray left hand a showed proximal phalanx fracture of middle finger. CT scan brain done on 04.12.2008 showed 2x3.5x3.5 cms left posterior temporal contusion with 6mm midline shift both right side. There was left temporal linear fracture with underlying fracture haematoma. The third ventricle and suprasellar cisterns were seen well. There was partial effacement of left convexity sub archnoid space. The rest of the brain parenchyma was normal. On examination, there was a 4x0.5x0.5 cms left temporal region laceration with no palpable fracture underlying it. There was 1x0.5x0.5 cm laceration over right middle finger. There was no CSF rhinorrhoea or otorrhoea. The spine examination showed no tenderness or deformity."

9.Ex.P4/in another Discharge summary which also proves that the injuries sustained by him are "Right knee brace as advised by Ortho Unit III for PCL and LCL injury". PW.2 was also examined on the side of the appellant/claimant, who gave the disability certificate at the rate of 45%. The Tribunal has taken the disability only at 15% and assessed the said loss at Rs.59,400/-. It is further observed that the injuries sustained by the appellant/claimant were grave in nature.



10.Exs.P2 and P4 are describes to the injury sustained by him and he was admitted in the hospital as inpatient and treated for the said injuries. Further the evidence of PW.2/Doctor also prove the fact that due to the fracture in the Right Middle Finger and also a fracture in the Right Knee, wherein, muscle fiber got damaged, he feels it very difficult to climb the staircase. Further, the injuries sustained in the head also makes him feel giddiness and headache.

11. In the absence of proof of income, it would be appropriate to calculate the monthly income at Rs.3,000/-. Accordingly, this Court grants Rs.3,000/- towards loss of earning for a period of one month. The Tribunal has rightly observed that the age of the appellant/claimant was 52 years at the time of the accident, but fixing the disability at 15% is not proper. Hence, this Court is inclined to modify the disability at 30% and is also inclined to award Rs.3,000/- per percentage towards Disability. Accordingly, this Court grants Rs.90,000/- (Rs.3,000/- X 30% = Rs.90,000/-) under the head "Disability".

12. In view of the nature of injuries and the disability sustained by the appellant/claimant, the sum awarded needs to be modified. Further, it is seen that no amounts were awarded towards 'extra nourishment', 'attender charges' and 'medical expenses'. Therefore, this Court is inclined to award a sum of Rs.10,000/-, Rs.10,000/- and Rs.15,000/- respectively under these heads. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:

S.No	Head	Awarded by the Tribunal	Enhanced Compensation (in.Rs.)
1.	Disability (Rs.3,000/- X 30%)	59,400.00	90,000.00
2.	Pain and sufferings	10,000.00	20,000.00
3.	Extra nourishment		10,000.00
4.	Transportation	2,000.00	5,000.00
5.	Attender's charges		10,000.00
6.	Damage to articles	1,000.00	2,000.00
7.	Medical Bills		15,000.00
Total		72,400.00	1,52,000.00

Thus, the appellant/claimant is entitled to a sum of Rs.1,52,000/- together with interest at the rate of 7.5% per



annum from the date of claim till the date of deposit.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.72,400/- to Rs.1,52,000/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The respondent/ Transport Corporation is directed to deposit the entire amount, awarded by this Court along 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's bank account through RTGS within a period of two weeks thereon.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Subordinate Court, Arni.

+1cc to Mr.P.Satheesh Kumar, Advocate, S.R.No. 58962

C.M.A.No.548 of 2015

RSI (CO)
GN(08/11/2019)