

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.07.2019
CORAM:
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM
C.M.A.No.674 of 2015

Shanmugam

... Appellant/Petitioner

Vs

Managing Director,
Tamil Nadu State Express Transport Corporation Limited,
Vellore. ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment in M.A.C.T.O.P.No.327 of 2004 dated 23.08.2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

For Appellant : M/s.Subadra
for M/s.M.Malar

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by claimant against the judgment and decree made in M.A.C.T.O.P.No.327 of 2004, dated 23.08.2011, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

2. The claimant/injured is the appellant herein, who has preferred the appeal for enhancement of compensation awarded by the Tribunal.

3. The brief case leading to the claim application is as follows:

On 27.07.2003, at about 09.45 am, while the Petitioner was travelling in a bus, the driver of the bus belonging to the Tamil Nadu State Express Transport Corporation Limited/respondent, drove the bus in a rash and negligent manner and hit against the Tamarind tree, due to which, the petitioner/appellant herein and the co-passengers sustained grievous injuries. The appellant, who took medical treatment in

the Thiruvannamalai Government Hospital for the said injuries, is stated to have sustained disability and incurred heavy medical expenses and also undergone pain and suffering and therefore claimed Rs.1,00,000/- as compensation under various heads.

4. The respondent/Transport Corporation simply denied the mode of accident as stated in the claim application by stating that the accident is only an unexpected event and there is no rash and negligence driving on the part of the driver of the bus viz.,Devraj. Further, the sum claimed by the claimant for medical expenses and other related heads are excessive and imaginary one.

5. The Tribunal, after perusing the documents and based on the evidence placed before it, has given its finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the Transport Corporation bus and directed the Transport Corporation to pay the compensation. The sum awarded by the Tribunal under various heads is as follows:

Sl.No.	Heads	Amount Awarded by the Tribunal
1.	Partial permanent disability (20%)	20,000.00
2.	Pain and sufferings	7,500.00
3.	Transport and medical expenses	10,000.00
4.	Total	Rs.37,500/-

6. In the grounds of appeal, the appellant is very much aggrieved against the quantum of award. It is averred by the appellant that the injured sustained fracture in left hand, nasal bone and suffered grievous injuries in his left elbow and left shoulder. It is further stated that Ex.P.3, the injury has been described as grievous one. The claimant underwent treatment as in-patient from 27.07.2003 to 05.08.2003. The evidence of doctor, who issued the disability certificate, assessed the disability at 35% and issued wound certificate under Ex.P.2 and Disability Certificate under Ex.P.3. However, the Tribunal has reduced the same to 20% and awarded only Rs.20,000/- under the head of partial permanent disability. The Tribunal awarded the total sum of Rs.10,000/- towards transport expenses, medical expenses, future medical expenses, extra nourishment etc, without taking into consideration the attendant charges incurred by the injured and not awarded any sum under the said head. Hence, it is contended that the said compensation is unreasonable. The other limb of argument raised by the

appellant is that, at the time of accident, the injured person was 25 years old and hence, future prospects of the injured ought to have been considered by the Tribunal.

7. Heard both sides and perused the documents.

8. On a perusal of the records, it is apparent that the for the accident occurred on 27.07.2003, MCOP.No.327/2004 has been filed before the Tribunal. Ex.P.2 is Wound Certificate and Ex.P3 is the disability certificate. From the wound certificate, it is seen that the claimant sustained four injuries and out of the said four injuries, two injuries are grievous in nature. Further, it is seen that the injured has taken treatment as in-patient for certain period i.e, from 27.07.2003 to 05.08.2003. PW2/doctor also deposed before the Court about the injuries sustained by the appellant and assessed the disability at 35%. Even though it is stated that appellant took inpatient treatment, no discharge summary has been filed before the Tribunal and also there was no clear deposition or evidence in respect of the documents verified by PW2 for assessing the disability of the injured, after 7 years, for the accident occurred on 27.07.2003. Hence, at these circumstances, the tribunal has taken the disability of the appellant/injured at 20% and awarded a sum of Rs.20,000/- as compensation by taking Rs.1000/- per percentage of disability.

9. The respondent/Transport Corporation vehemently opposed the appeal for enhancement, by stating that there is absolutely no documents filed on behalf of the appellant/petitioner to support the evidence of doctor who assessed 35% disability. He further submitted that the finding of the Tribunal is well considered and no interference is required.

10. This Court, while going through the entire materials on record, is of the view that the nature of injury and fracture sustained by the appellant viz., in the left Clavicle as well as right nasal bone would definitely trouble his day to day life with pain and suffering throughout his life and therefore, the disability is now fixed at 30% instead of 20% fixed by the Tribunal. Further, by granting a sum of Rs.1,000/- per percentage of disability, Rs.30,000/-, is awarded as compensation under the head "disability".

11. Further, from the evidence of the appellant/injured/P.W.1, who has stated to have undergone treatment as in-patient, it is apparent that he would have necessarily incurred transport expenses, reasonable medical

expenses and also attendant charges. Therefore, the compensation of Rs.10,000/- provided by the Tribunal under the above heads is essentially to be modified and enhanced. Accordingly, this court deems it fit to award the following sums under the above stated heads as follows:

S.No	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
1.	Permanent partial disability	20,000.00 (20%)	30,000.00 (30%)
2.	Pain and sufferings	7,500.00	10,000.00
3.	Attendant charges, Transport and medical expenses	10,000.00	15,000.00
Total		37,500.00	55,000.00

12. In the result,

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

(ii)The compensation awarded by the Tribunal is enhanced from Rs.37,500/- to Rs.55,000/-, which 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/ Tamil Nadu State Express Transport Corporation Limited, 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. On such deposit being made, the Tribunal shall transfer the amount to the appellant/claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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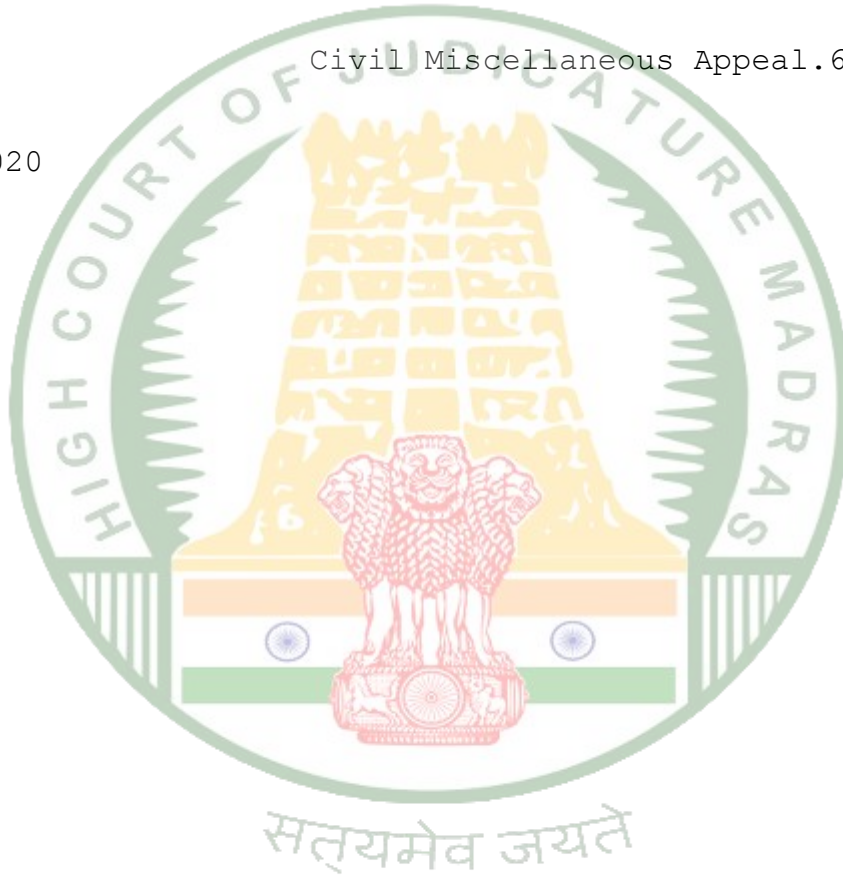
- 1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Thiruvannamalai.
- 2.The Section Officer,
VR Section, Madras High Court.

+lcc to M/s.Malar Advocate sr59312

+lcc to M/s.Sivakumar Advocate sr59452

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