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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.08.2018
Delivered on : 02.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1550 of 2018

C.Mohandoss

... Appellant/Petitioner

Vs

1.The Managing Director,
Tamilnadu State Transport Corporation,
(Kumbakonam Division I) Limited,
Railway Station New Road,
Kumbakonam - 612 001.

2.R.Murugesan

3.The New India Assurance Company Ltd.,
No.1, Bharathi Road, Arcot Woodlands Building,
Cuddalore.
Now at - Door No.232, NSC Bose Road,
Bombay Mutual Building,
Chennai.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 1.7.2016 in M.C.O.P.No.1035 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub-Court), Cuddalore.

For Appellant : Ms.Ramya V.Rao
For Respondents: Mr.Udhayashankar (for R3)

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.1,89,321/- awarded by the Tribunal, the appellant/claimant has filed the appeal.

2. Brief facts are that on 12.1.2015, at 5.15 P.M., the appellant was driving the first respondent's vehicle bearing registration No.TN-49 N 1950 and when the bus was proceeding at



Anna Perumal Koil, the second respondent's lorry bearing registration No.TN-51 H 7002 came in the opposite direction at a very speed in a rash and negligent manner, without making horn, hit against the bus and caused the accident. Due to the accident, the appellant sustained fracture and also multiple grievous injuries all over the body. Immediately after the accident, the appellant was admitted in Government Hospital, Sirkali where from he was transferred to Government Hospital, Cuddalore and then transferred to Vairam Multi Specialty Hospital, Mayiladuthurai.

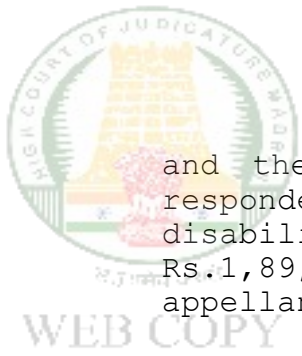
3. Regarding the accident, a criminal case in Crime No.13 of 2015 was registered against the driver of the lorry. At the time of accident, the appellant was aged 43 years and was earning Rs.25,000/- per months by working as driver in Tamil Nadu State Transport Corporation. Stating that the accident was due to rash and negligent driving of the driver of the lorry, the appellant has filed the claim petition claiming compensation of Rs.25,00,000/-.

4. Resisting the claim petition, the first respondent filed counter stating that when the first respondent bus was stopped at Annaperumal koil to alight passengers, the lorry bearing registration No.TN-51 H 7002 came from opposite direction in a rash and negligent manner dashed against the bus and caused the accident. Therefore, the accident was due to the negligence of the driver of the second respondent. It is stated that as the appellant travelled in the bus, the first respondent was added as respondent.

5. Denying the manner of accident, the third respondent filed counter stating that the first respondent bus was driven rashly and negligently by the appellant and dashed against the second respondent's lorry and caused the accident. Hence being a tort-feaser, the appellant cannot claim any compensation for the wrong committed by him. It is stated that the investigation reveals that the appellant is still working as a driver in the first respondent's bus and was earning as before the date of accident. In the accident, the appellant had sustained only simple injuries. Therefore, the compensation of Rs.25,00,000/- claimed by the appellant is highly exorbitant.

6. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.R.Venugopal was examined as P.W.2 and Exs.P1 to P12 were marked. No oral and documentary evidence was adduced on the side of the respondents.

7. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was due to rash and negligent driving of the driver of the second respondent's lorry



and the third respondent, who is the insurer of the second respondent's lorry is liable to pay compensation. Taking the disability as 30%, the Tribunal awarded total compensation of Rs.1,89,321/-. Being dissatisfied with the quantum, the appellant has filed the present appeal.

8. Challenging the impugned award, the learned counsel for the appellant submitted that while the Tribunal rightly fixing the negligence on the driver of the lorry, failed to award adequate compensation for the grievous injuries sustained by the appellant. In fact, the appellant sustained fracture right patella and P.W.2 assessed the disability as 40%. However, the Tribunal erred in taking the disability as 30%. The learned counsel further submitted that the Tribunal failed to consider the loss of income during the treatment period and at least three months loss of income ought to have been considered. Thus, the learned counsel for the appellant prayed for enhancement of compensation.

9. Reiterating the reasoning given by the Tribunal in awarding Rs.1,89,321/-, the learned counsel for the third respondent submitted that the said amount awarded by the Tribunal is reasonable and the same need not be interfered with.

10. I have heard Ms.Ramya V.Rao, learned counsel for the appellant and Mr.Udhayashankar, learned counsel for the third respondent and also perused the materials available on record.

11. Since the present appeal has been preferred by the appellant for enhancement, there is no reason to look into the aspect of negligence for the reason that the Tribunal after analysing the materials produced before it recorded the finding that the accident was due to rash and negligent driving of the driver of the second respondent's lorry. The aforesaid finding was not challenged by the second respondent or his insurer i.e., the third respondent.

12. The point that arises for consideration is whether the compensation of Rs.1,89,321/- awarded by the Tribunal for the injuries sustained by the appellant is reasonable.

13. It is admitted by the third respondent that the appellant was working as driver and was aged 43 years at the time of accident. Thus, at the time of accident, the appellant was aged 43 years and was working as driver in the first respondent Transport Corporation.

14. In his evidence, P.W.1 deposed that in the accident, he sustained fracture patella right and grievous injuries and also multiple fractures all over his body and head. P.W.1 further



deposed that due to injuries, he was not able to sit long hours while driving. Ex.P4 is the accident register, where from it is seen that fracture patella right and the injury sustained by the appellant are grievous in nature.

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15. P.W.2-Doctor examined the appellant and assessed the disability as 40%. Ex.P11 is the disability certificate issued by P.W.2. In his evidence, P.W.2-Doctor deposed that due to malunion of bone, the appellant was not able to work as before the accident.

16. Taking note of the cross-examination of P.W.2-Doctor that the disability sustained by the appellant on the basis of whole body as 30%, the Tribunal fixed 30% disability for determining the compensation under the head disability. There was no dispute that in the accident the appellant sustained fracture right patella and malunion of bone. The reasoning given by the Tribunal reducing the disability from 40% to 30% is not convincing as P.W.2-Doctor after examining the P.W.1, assessed the disability as 40% and issued Ex.P11 disability certificate. To show that the disability assessed by P.W.2 is on the higher side, the third respondent has not adduced any evidence. Therefore, this Court is inclined to take the disability as 40% as assessed by P.W.2-Doctor. Taking Rs.3,000/- per percentage of disability, Rs.1,20,000/- is awarded towards disability in the place of Rs.90,000/- awarded by the Tribunal.

17. As far as medical expenses is concerned, the appellant had produced Ex.P6-medical bills. As per Ex.P6, the appellant incurred a sum of Rs.28,721/-, which the Tribunal has rightly awarded and the same is maintained.

18. The Tribunal has not awarded any amount towards loss of earning. In its award, the Tribunal held that since after the accident the claimant was continuing his work as driver, there was no loss for earning and injuries sustained by him do not affect his driving work. Therefore, the appellant is not entitled any amount under the head loss of earning.

19. By relying upon the decision of a Division Bench of this Court in B.Anandhi v. R.Latha and another, reported in 2002 ACJ 233, the learned counsel for the appellant submitted that though the appellant received salary for leave period, the same is not a ground for denying the compensation under the head loss of earning.

20. In B.Anandhi v. R.Latha and another, supra, the Division Bench of this Court held as under:

"13. Because of the injury sustained by him in the





this Court feels that a sum of Rs.25,000/- awarded by the Tribunal is low and the same is enhanced to Rs.50,000/-.

26. The Tribunal awarded Rs.15,000/- for extra-nourishment and Rs.5,000/- for damages to clothes and articles. The said amounts awarded by the Tribunal since reasonable, the same are maintained.

27. The Tribunal has not awarded any amount towards attender charges. Though in the claim petition, the appellant stated that first he had taken treatment at Government Hospital, Sirkali and then at Government Hospital at Cuddalore and thereafter, at Vairam Multi Specialty Hospital, Mayiladuthurai, he was not able to produce the discharge summary issued by those hospitals. On the other hand, he had produced only Ex.P5-accident register issued by the Government Hospital, Sirkali. Taking note of the injuries sustained by the appellant, he would have been taken care of by the attender during the period of treatment. Therefore, it would appropriate to award a sum of Rs.10,000/- for attender charges.

28. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries, this Court finds that it would be appropriate to award a sum of Rs.10,000/- towards loss of amenities. Thus, the total compensation of Rs.1,89,321/- awarded by the Tribunal is enhanced to Rs.3,24,041/- as under:

Heads	Rs.
Disability	1,20,000.00
Medical expenses	28,721.00
Loss of earning	59,720.00
Transport charges	25,600.00
Pain and suffering	50,000.00
Extra-nourishment	15,000.00
Damages to clothes and articles	5,000.00
Attender charges	10,000.00
Loss of amenities	10,000.00
Total	3,24,041.00
Rounded off	3,24,000.00



29. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.1,89,321/- awarded by the Tribunal is enhanced to Rs.3,24,000/-. The third respondent is directed to deposit Rs.3,24,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire amount on filing proper cheque application before the Tribunal. No costs.

s/d-
Assistant Registrar(CS V)

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Sub-Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
Special Sub-Court, Cuddalore.

+1 CC to Mr.A.N. Viswanatha Rao, Advocate sr 947.

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BS(CO)
SP(27/08/2019)