



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1617 of 2018

Prem Anand

.. Appellant/Petitioner

Vs.

1.G.Ponnusamy

2.The Managing Director,  
Tamil Nadu State Transport Corporation,  
(Madurai) Ltd,  
Nagerkoil Region.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 24.02.2016 in MCOP.No.3005 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court I, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For R2 : Mr.S.V.Vasanth Kumar

For R1 : Exparte

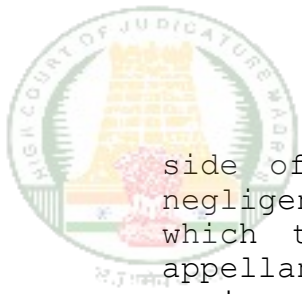
#### J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 24.02.2016 in MCOP.No.3005 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court I, Chennai.

2.The appellant herein is the claimant aggrieved against the award of the Tribunal at Rs.1,84,900/- let in as claim of Rs.12,00,000/-. The claim has been made by the claimant before the Tribunal was Rs.4,00,000/- before this forum it was enhanced to Rs.12,00,000/- by way of amendment.

3.The brief facts is as follows:

On 08.05.2008 at about 11.00 am when the petitioner travelled as passenger in the Tamil Nadu State Transport Corporation bearing Reg.No.TN-74-N-0744 and sitting back side window seat of left



side of bus, the 1<sup>st</sup> respondent drove the vehicle rashly and negligently and grazed on a road side electric post, due to which the petitioner's left hand was seriously injured. The appellant claimed a sum of Rs.4,00,000/- as compensation under various heads towards loss of income, loss of earning, transportation, medical expenses, extra nourishment and loss of amenities.

4.The 2<sup>nd</sup> respondent/Transport Corporation contended that there is no rashness and negligence on the part of the driver in driving the offending bus. The accident if any occurred was solely due to the negligence of the applicant himself, who got least care for road safety and traffic norms. The amount claimed by the claimant is very excessive and exorbitant.

5.The Tribunal by analyzing the evidence and documents with regard to the negligence on the part of the driver of the Transport Corporation has given finding that the accident occurred only due to rash and negligent driving by the driver of the bus and awarded a sum of Rs.1,84,900/- as compensation under various heads as follows:

| S.No                  | Description                               | Amount awarded by the Tribunal<br>(Rs) |
|-----------------------|-------------------------------------------|----------------------------------------|
| Pecuniary damages     |                                           |                                        |
| 1.                    | Expenses for medical                      | Rs.1,900/-                             |
| 2.                    | Expenses towards conveyance               | Rs.5,000/-                             |
| 3.                    | Extra nourishment                         | Rs.10,000/-                            |
| 4.                    | Attender charges                          | Rs.2,000/-                             |
| 5.                    | Damages to clothing & articles            | Rs.1,000/-                             |
| 6.                    | Compensation for disability               | Rs.1,20,000/-                          |
| Non-Pecuniary damages |                                           |                                        |
| 7.                    | Pain & sufferings                         | Rs.25,000/-                            |
| 8.                    | Compensation for loss of future amenities | Rs.20,000/-                            |
|                       | Total                                     | Rs.1,84,900/-                          |



6. Aggrieved against the said award the appellant/claimant preferred this appeal. In the grounds of appeal it is very much contended by the appellant that the Tribunal has observed that the accident occurred due to rash and negligent driving on the part of the driver of the Transport Corporation bus, the amount awarded by the Tribunal is very meagre and inadequate.

7. It is further stated that due to the injuries sustained by the appellant he was admitted in hospital as in-patient from 08.05.2008 to 15.05.2008 totally for eight days. He also underwent surgery, screws and plates were fixed on 08.05.2008. Subsequently, by another surgery, the said screws and plates were removed on 14.07.2010. The other grievance raised by the appellant is that he was working as an Executive - Legal and was earning a sum of Rs.21,000/- per month. The appellant was forced to avail two months medical leave and due to the injuries suffered, he has lost salary for two months. The sum of Rs.1,20,000/- awarded by the Tribunal towards disability at 45% was also aggrieved by the appellant as very erroneous. On the whole the appellant is very much aggrieved over the amount awarded by the Tribunal under the heads of loss of amenities, pain & suffering, extra nourishment and transportation.

8. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the appellant and Mr.S.V.Vasanth Kumar, learned counsel appearing for the 2<sup>nd</sup> respondent/Transport Corporation and perused all the materials available on record.

9. From the materials available on record, it is seen that the appellant had sustained injuries and also taken treatment as in-patient from 08.05.2008 to 15.05.2008 i.e. for eight days. The appellant has contended that he lost income during the treatment period because of the said injuries sustained by him. The appellant was examined by P.W.2-Doctor who assessed disability and issued certificate. The Tribunal considering the evidence of P.W.2-Doctor has reduced the disability from 45% to 40% by observing that P.W.2 who issued the disability certificate is not a doctor who gave treatment to the petitioner and the fixation of percentage of disability may vary up to 5% from Doctor to Doctor. Disability certificate issued by P.W.2/Doctor was marked as Ex.P12. By fixing Rs.3,000/- per percentage for 40% disability. The Tribunal has awarded Rs.1,20,000/- under the head disability. This Court by considering the injuries sustained by the petitioner and also considering the fact that he had undergone surgery is inclined to take 45% disability as assessed by P.W.2 and by taking Rs.3,000/- per percentage, grants a sum of Rs.1,35,000/- (Rs.3,000/- X 45%). Similarly, the appellant is entitled to Rs.42,000/- towards loss of income for two months (Rs.21,000/- x 2). Since, the amount awarded by the Tribunal towards pain &



suffering, loss of amenities and extra nourishment are meagre, the same are enhanced to Rs.75,000, Rs.25,000/- and Rs.25,000/- respectively under those heads. It is seen that the Tribunal has not awarded any amount towards transportation and future medical expenses, therefore this Court grants a sum of Rs.25,000/- each respectively. The amount awarded by the Tribunal under other heads are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

| Heads                                     | sum awarded by the tribunal | sum modified by this Court |
|-------------------------------------------|-----------------------------|----------------------------|
| Expenses for medical                      | Rs.1,900/-                  | Rs.1,900/-                 |
| Expenses towards conveyance               | Rs.5,000/-                  | Rs.5,000/-                 |
| Extra nourishment                         | Rs.10,000/-                 | Rs.25,000/-                |
| Attender charges                          | Rs.2,000/-                  | Rs.2,000/-                 |
| Damages to clothing & articles            | Rs.1,000/-                  | Rs.1,000/-                 |
| Compensation for disability               | Rs.1,20,000/-               | Rs.1,35,000/-              |
| Pain & sufferings                         | Rs.25,000/-                 | Rs.75,000/-                |
| Compensation for loss of future amenities | Rs.20,000/-                 | Rs.25,000/-                |
| Transportation                            | -                           | Rs.25,000/-                |
| Future medical expenses                   | -                           | Rs.25,000/-                |
| Loss of income                            | -                           | Rs.42,000/-                |
| Total                                     | Rs.1,84,900/-               | Rs.3,61,900/-              |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,84,900/- is enhanced to Rs.3,61,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. No costs.

11. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2<sup>nd</sup>



respondent / Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Special Subordinate Judge I,  
Motor Accident Claims Tribunal,  
Chennai.

Copy To

2.The Section Officer,  
VR Section,  
High Court,  
Madras.

+1cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No. 50794

C.M.A.No.1617 of 2018

NRJK (CO)  
GN (03/12/2019)