



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.21 of 2018

P.Praveenkumar Reddy .. Appellant/Petitioner
(As per order in M.P.No.1113/14
Order dated 28.01.2015 the petitioner
was declared as Major)

Vs.

Metropolitan Transport Corporation Ltd.,
Rep. By its the Managing Director,
Pallavan House, Anna Salai,
Chennai - 600 002. .. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.10.2017 made in M.C.O.P.No.1498 of 2004 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.S.S.Swaminathan

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 24.10.2017 made in M.C.O.P.No.1498 of 2004 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1498 of 2004 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.09.2013. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation as well as negligent act on the part of the appellant, fixed 50% contributory negligence on the part of both



the appellant as well as respondent-Transport Corporation, awarded a sum of Rs.1,88,000/- as compensation and directed the respondent-Transport Corporation to pay a sum of Rs.94,000/- i.e., 50% of the award amount, as compensation to the appellant. Not being satisfied with the above amount awarded by the Tribunal, and fixing 50% contributory negligence the appellant has come out with the present appeal seeking enhancement of compensation and setting aside 50% contributory negligence.

3.The learned counsel appearing for the appellant/claimant contended that the Tribunal has erred in fixing 50% negligence on the part of the appellant. The Tribunal ought to have fixed entire negligence on the part of the driver of the bus as the accident occurred only due to the rash and negligent driving by the driver of the bus. The Doctor, who examined as P.W.2, has certified that the appellant has suffered 70% permanent disability. The Tribunal without any valid reason reduced percentage of disability to 60%. The Tribunal has not awarded any amount towards loss of income. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside 50% of contributory negligence on the part of the appellant as well as enhancement of compensation.

4.Per contra, Mr.S.S.Swaminathan, the learned counsel appearing for the respondent-Transport Corporation contended that the accident occurred only due to negligent act on the part of the appellant as he travelled in the foot board, inspite of being warned by the conductor to get into the bus. The Tribunal ought to have fixed entire negligence on the appellant. P.W.2 is not the Doctor, who treated the appellant. The appellant took treatment as in-patient only for three days and percentage of disability assessed by P.W.2- Doctor is excessive. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent-Transport Corporation and perused all the materials available on record.

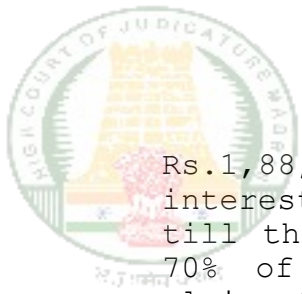
6.From the materials available on record, it is seen that the accident occurred, when the appellant travelled in the foot board. The Tribunal considering this fact held that the appellant is also responsible for the accident. There is no error in the said finding of the Tribunal, but the percentage of contributory negligence fixed on the appellant is reduced to 30% from 50%. P.W.2-Doctor has certified that the appellant has suffered 70% of disability. The Tribunal reduced the same to 60% of disability on the ground that P.W.2 Doctor was not the Doctor who treated the appellant and percentage of disability may vary



from one Doctor to another. The reason given by the Tribunal is not valid. The appellant is entitled to get compensation for 70% disability. The appellant is entitled to a sum of Rs.2,000/- per percentage of disability and a sum of Rs.1,40,000/- (Rs.2,000/- X 70%) is granted towards disability by awarding Rs.2,000/- per percentage of disability. The appellant has taken treatment as in-patient in Government Royapettah Hospital from 22.09.2003 to 05.12.2003, 17.03.2004 to 17.05.2004 and 15.09.2004 to 18.09.2004. The Tribunal has not awarded any amount towards attendant charges and this Court awards a sum of Rs.20,000/- under this head. A sum of Rs.15,000/- granted by the Tribunal towards loss of amenities is meagre and hence, the sum is enhanced to Rs.25,000/-. The amounts granted by the Tribunal under other heads are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows: -

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Compensation for disability	1,20,000	1,40,000	Enhanced
2.	Pain and sufferings	25,000	25,000	Confirmed
3.	Transport to hospital	3,000	3,000	Confirmed
4.	Extra nourishment	10,000	10,000	Confirmed
5.	Mental agony	15,000	15,000	Confirmed
6.	Loss of amenities of life	15,000	25,000	Enhanced
7.	Attendant charges	-	20,000	Granted
	Total	Rs.1,88,000 /- 70% of the award amount comes to Rs.1,31,600 /-	Rs.2,38,000/- 70% of the award amount comes to Rs.1,66,600/-	Enhanced by Rs.50,000/- 70% of the enhanced amount comes to Rs.35,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



Rs.1,88,000/- is hereby enhanced to Rs.2,38,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-claimant is entitled to 70% of the award amount i.e. Rs.1,66,600/-. The appellant-claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent-Transport Corporation is directed to deposit 70% of the enhanced award amount now determined by this Court i.e., Rs.1,66,600/- along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant-claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The V Judge,
Court of Small Causes,
Motor Accident Claims Tribunal ,
Chennai.

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

+1cc to Mr.S.S.Swaminathan, Advocate, SR.No.17586
+1cc to Mr.K.Varadha Kamaraj, Advocate, SR.No.18000

C.M.A.No.21 of 2018

Kak(27/08/2019)
Kak(18/11/2019)