

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2991 of 2019

Chidambaradasan

... Appellant / Petitioner

Vs.

The Managing Director,
The Chennai Metropolitan Transport
Corporation Limited,
having its office at
Pallavan House, Anna Salai,
Chennai - 600 002. ... Respondent / Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 08.10.2013 made in M.A.C.T.O.P.No.249 of 2011 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Ponneri, Thiruvallur.

For Appellant : M/s.A.Subadra

For Respondent : Mr.S.Sivakumar

Judgment

This Civil Miscellaneous Appeal has been filed challenging the award dated 08.10.2013 passed in M.A.C.T.O.P.No.249 of 2011 by the Motor Accident Claims Tribunal (IV Additional District Judge), Ponneri, Thiruvallur.

2. The brief facts of the case is that on 19.04.2011 at about 11.00 hours, while the appellant was walking from North to South direction at RG Salai, Mettukuppam Bus Stand, Chennai, a bus bearing Registration No.TN-01-N-4993 driven by its driver in a rash and negligent manner, dashed against him. As a result, he sustained grievous injuries all over his body and he become permanently disabled in spite of the treatment given. Since the accident occurred only due to the rash and negligent driving of the respondent's driver, the appellant filed a Claim Petition against them before the Motor Accident Claims Tribunal (IV Additional District Judge), Ponneri, Thiruvallur, claiming a sum

of Rs.2,50,000/- as compensation for the injuries and the expenditure made for the treatment.

3. Denying the mode of accident, the respondent has contended that there was no negligence on the part of the respondent's driver and it is the appellant who tried to board in the moving bus, and therefore, the accident had occurred only due to negligence of the appellant and they are not liable to pay any compensation to him.

4. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.1,55,000/- as compensation under the following heads :

S.No	Particulars	Amount in Rs.
1.	Transport to Hospital	5,000/-
2.	Extra Nourishment	5,000/-
3.	Pain and Sufferings	25,000/-
4.	Disability 55%	1,10,000/-
5.	Loss of Income	10,000/-
	Total	1,55,000/-

5. Aggrieved by the award, the appellant/claimant has preferred this appeal before this Court by submitting that at the time of accident, the appellant was aged about 45 years and he was doing Centring work and was earning Rs.500/- per day. But the Tribunal, without considering the same, awarded a sum of Rs.10,000/- as loss of income. Further, it has been submitted that though it was accepted by the Tribunal that the appellant/claimant has sustained 55% disability based on the doctor's report, the Tribunal has failed to adopt multiplier method and awarded a sum of Rs.1,10,000/- under the head of permanent disability. Moreover, it has been submitted that the Tribunal ought to have awarded compensation under the heads of medical expenses, future medical expenses, damages, mental agony, loss of amenities, attender charges, disfigurement and loss of expectation of life, and also the sum awarded under all other heads is also meagre and the same has to be enhanced.

6. Heard both sides and perused the materials available on record.

7. On perusal of the award dated 08.10.2013 passed in M.A.C.T.O.P.No.249 of 2011 by the Motor Accident Claims Tribunal (IV Additional District Judge), Ponneri, Thiruvallur, it is observed that though it was stated by the respondent that the accident occurred only due to the negligent act of the

appellant/claimant, they have not examined any third party who witnessed the accident. Therefore, the Tribunal has fixed the negligence on the part of the respondent's driver and fixed the liability on the respondent. It is further observed that the Tribunal based on the evidence of doctor who examined the claimant had assessed the disability at 55% and awarded a sum of Rs.1,10,000/- i.e. Rs.2,000/- per percentage towards Loss of Income. The 55% disability assessed by the Tribunal has to be taken as such since the accident register and the discharge summary reveals the injuries sustained by the claimant and the treatment taken by him. However, the assessment made by the Tribunal at Rs.2,000 per percentage is found to be meagre and therefore, it is hereby modified as Rs.3,000/- per percentage.

8. It is also observed from the order of the Tribunal that the Tribunal has not awarded any amount towards Medical Expenses. Though there is no sufficient document filed to prove the expenses incurred for medical, the claimant definitely would have spent some amount towards Medical Expenses, considering the same, a sum of Rs.10,000/- is awarded towards Medical Expenses. Moreover, it is observed that the Tribunal has not awarded any amount towards Attender charges and Loss of Amenities. Considering the nature of injuries sustained by the appellant and considering the period of treatment taken by the appellant, a sum of Rs.10,000/- is awarded towards Loss of Amenities and a sum of Rs.5,000/- is awarded towards Attender charges. The sum awarded under all other heads i.e. Rs.5,000/- for Transport to Hospital, Rs.25,000/- for Pain and Sufferings, Rs.5,000/- for Extra Nourishment and Rs.10,000/- for Loss of Income is found to be reasonable and therefore, it is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified in the following manner :

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Transport to Hospital	5,000	5,000	Confirmed
2.	Extra Nourishment	5,000	5,000	Confirmed
3.	Pain and Sufferings	25,000	25,000	Confirmed
4.	Disability 55% (Rs.3000 per 0 percentage)	1,10,00	1,65,000	Enhanced
5.	Loss of Income	10,000	10,000	Confirmed
6.	Medical Expenses	-	10,000	Granted

7.	Loss of Amenities	-	10,000	Granted
8.	Attender Charges	-	5,000	Granted
		0		
	Total	1,55,000	2,35,000	Enhanced
			0	by 80,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation Rs.1,55,000/- awarded by the Tribunal by order dated 08.10.2013 in M.A.C.T.O.P.No.249 of 2011 is hereby enhanced to Rs.2,35,000/-. The appellant is directed to pay necessary court fee, if any, he has to pay.

10. The learned counsel for the respondent would contend that since there is a delay of 1805 days in filing the above appeal, the appellant is not entitled for interest for the delay period as per order of this Court.

11. Considering the submissions made by the learned counsel for the respondent, this Court directs the respondent to deposit the enhanced amount awarded by this Court with interest at the rate of 7.5% per annum from the date of petition till the date of realization excluding the delay period, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the amount, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Additional District Judge,
Motor Accident Claims Tribunal,
Thiruvallur.

+1cc to Mr.M.Malar, Advocate, S.R.No. 71997

+1cc to Mr.S.Sivakumar, Advocate, S.R.No. 70660

C.M.A.No.2991 of 2019

SPD (CO)

GN (16/12/2019)