



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2217 of 2008

V.Ramakrishnan

... Appellant/Claimant

Vs.

The Managing Director,
Tamilnadu State Transport Corporation,
Kancheepuram.

... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the Learned Motor Accident Claims Tribunal/Additional District Court, Fast Track Court, Kancheepuram in M.A.C.T.O.P.No.502 of 1999 dated 27.04.2007.

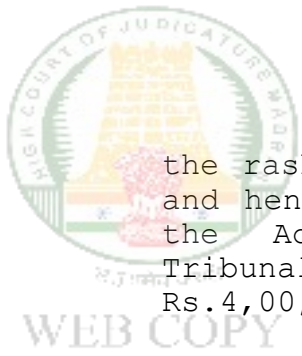
For Appellant : Mr.B.Jayaraman

For Respondent : Mr.S.V.Vasanthakumar

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 27.04.2007 made in M.A.C.T.O.P.No.502 of 1999 on the file the Learned Motor Accident Claims Tribunal/Additional District Court, Fast Track Court, Kancheepuram.

2. The case of the appellant is that on 05.05.1999 at about 03.20 p.m., the appellant was proceeding in a Hero Honda bearing Reg No.TAH-1551 along with two others from Kancheepuram towards Walajabad at normal speed on the extreme left side of the Highways Road. While the vehicle (Hero Honda) was going near CNA Street at Perumal Koil Bus stop, one Government Bus bearing Reg No.TN-32-N-0174 belonged to the respondent suddenly came on the wrong side of the road and dashed against the Hero Honda. Due to this accident, the appellant and other occupants of the Motor Cycle were thrown away and all of them were sustained multiple grievous injuries. Immediately, they were taken to the Government Hospital at Kancheepuram, but one Ravi had died in the hospital and the appellant and one Mari were referred to Government Hospital at Chennai. The accident was solely due to



the rash and negligent driving of the respondent's bus driver and hence the appellant filed a petition against them before the Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court, Kancheepuram, claiming Rs.4,00,000/- as compensation under various heads.

3. Denying the allegations, the respondent filed a counter affidavit stating that it is the appellant and his friends came in the wrong way and dashed against the respondent's bus and they are not liable to pay any compensation to the appellant. Further, three persons were traveled in the vehicle (Hero Honda) on the day of occurrence, which is an offence as per Section 28 of the Motor Vehicles Act. Moreover, it has been stated that the appellant is entitled to claim only from the insurer or otherwise the owner of the Motor Bike and he is not entitled to claim any compensation from this respondent.

4. The Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court, Kancheepuram, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded Rs.1,40,000/- to the claimant as given below :

S.No.	Description	Amount
1.	Medical Expenses	5,000
2.	Nourishment	25,000
3.	Pain & Sufferings	25,000
4.	Permanently Disability	60,000
5.	Loss of Earning Power	25,000
	Total	1,40,000/-

5. Aggrieved by the award, the appellant/claimant has filed this appeal before this Court seeking enhancement of the award.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent, and perused the materials available on record.

7. On perusal of the award dated 27.04.2007 passed by the Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court, Kancheepuram in M.A.C.T.O.P.No.502 of 1999, it is observed that the appellant examined himself as PW1 and deposed that when they were going on a Motor cycle by the side of the road near Perumal Temple, they stopped the Motor cycle and were chatting with two other persons, at that time, the respondent's bus which came from the opposite direction in a rash and negligent manner dashed against them and thus the accident had occurred. In support of his deposition, he marked an FIR lodged by one Ramadoss as Ex.P1, who was an eye-witness



and he has stated in the FIR that when he was standing by the side of the road near Perumal Koil bus stop, a bus bearing Reg No.TN-32-N-0174 which was proceeding towards Kancheepuram in a high speed dashed on a Hero Honda bike bearing Reg No.TAH-1551 and caused the accident. The respondent denying such allegations marked a letter addressed by the Inspector of Police, Vishnukanchi Police Station to the General Manager, TNSTC Division III as Ex.R1, wherein, it has been stated that on investigation, the Police have found that the rider of the two wheeler alone was the cause of accident. However, it was not made clear in the document as to how many witnesses the Police had examined at the time of investigation, and therefore the Court below based on the deposition of the appellant and the statement of the eye-witness Ramadoss has come to the conclusion that the accident occurred only due to the rash and negligent driving of the respondent's driver.

8. It is further observed from the order of the Court below that the Court below has noticed the victim i.e. the appellant when he was standing in the witness box and noted that the victim was not able to walk freely, his speech was blurring and he was also having tremors over the entire body. The victim in his evidence has stated that his head was broken and he suffered serious injury on the back of his head and he was admitted in the Government Hospital at Chennai, where he was in coma for one month. Further, the victim has stated that he is taking 7 tablets a day, failure of which, he will have to suffer epilepsy. In addition to the above statement, the victim has marked a certificate issued by one Dr.Vaithilingam, in which, the doctor assessed 60% partial permanent disability. The doctor has also examined as PW2 and stated that the victim suffered fracture of frontal bone and parietal bone and his ribs 4 to 9 were also broken. The Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court, Kancheepuram after considering the statement of the appellant and evidence of doctor has come to the conclusion that the appellant has sustained partial permanent disability at 60%, but has omitted to adopt multiplier method while calculating the amount under the said head. Since it is a permanent disability, the Additional District Judge ought to have applied multiplier method, but without doing the same has awarded Rs.60,000/- i.e. Rs.1,000/- per percentage under the said head and this Court is inclined to modify the same.

9. On perusal of the records, it is observed that the appellant was working as boiler operator before the accident, and definitely he would have earned a minimum of Rs.2,500/- per month and hence the same is hereby fixed as his income. It is also observed that the appellant was aged 30 years at the time of accident. As per the case reported in 2009 ACJ 1298 [Sarla Verma and others vs Delhi Transport Corporation and another], the multiplier for a person aged 30 years is 17 and hence the same is hereby taken to calculate the amount under



the head of permanent disability, which comes to Rs.5,10,000/- i.e. 2500 x 12 x 17.

10. It is also observed from the award passed by the Court below that the sum of Rs.25,000/- awarded under the head of Nourishment is found to be excessive and instead of that Rs.10,000/- can be awarded for Nourishment and the remaining 15,000/- can be awarded for Transport and Loss of Amenity i.e. Rs.5,000/- for Transport and Rs.10,000/- for Loss of Amenity as they were omitted by the Court below. The amount awarded under all other heads i.e. Rs.5,000/- for Medical Expenses, Rs.25,000/- for Pain & Sufferings and another 25,000/- Rupees for Loss of Earning Power were all carefully considered and reasonably awarded by the Court below and hence the same is hereby confirmed.

11. In view of the observations made by this Court, the compensation awarded by the Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court, Kancheepuram, is modified in the following manner :

S.No.	Description	Amount
1.	Medical Expenses	5,000
2.	Nourishment	10,000
3.	Pain & Sufferings	25,000
4.	Permanently Disability (2500 x 12 x17)	5,10,000
5.	Loss of Earning Power	25,000
6.	Transport	5,000
7.	Loss of Amenity	10,000
	Total	5,90,000

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the respondent is directed to deposit the said amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. After depositing the said amount, the appellant/claimant can withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

The Additional District Judge
(Motor Accident Claims Tribunal),
Fast Track Court, Kancheepuram.

+ 2 ccs to Mr.B. Jayaraman, Advocate SR.NO..101928

C.M.A.No.2217 of 2008

TM(CO)
EU 6.7.2020