

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.08.2019
CORAM:
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM
C.M.A.No.2815 of 2019

R. Premkumar

...Appellant/petitioner

vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai, Chennai-2

...Respondent/Respondent

PRYAER:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.08.2018, in M.C.O.P.No.2998 of 2015, passed by the Principal Special Judge, Special Court for EC & NDPS Act Cases, Chennai - 104.

For Appellant : Mr.C.Richard Suresh Kumar

For Respondent : Mr.S.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant against the judgment and decree dated 29.08.2018, in M.C.O.P.No.2998 of 2015, passed by the Principal Special Judge, Special Court for EC & NDPS Act Cases, Chennai - 600 104.

2. The brief facts of the case is as follows:

On 10.03.2015, at about 17.45 hours, when the petitioner was travelling as pillion rider in the motorcycle bearing Regn.No.TN-04-AC-0033 T.H.Road, Mahalakshmi Jewellers, Old Washermanpet, at that time, a bus bearing Registration No.TN-01-AN-0181 belonging to the respondent/Transport Corporation, which was driven by its driver in a rash and negligent manner, dashed against the petitioner, as a result of which, the petitioner sustained grievous injuries all over his body. Immediately, he was taken to M.K.Nursing Home and transferred to Government Stanley Hospital, there he was admitted as in-patient for 10 days and continued his treatment for several months. Hence, he made a claim for a sum of Rs.6,00,000/- as compensation.

3. The respondent/Transport Corporation contested the claim by filing a counter statement, inter alia stating that they are not liable to pay the compensation and denies the averments made by the petitioner put the petitioner to strict

proof for the same. They alleged that there was no such accident occurred on 10.03.2015. They further contends that had there been any alleged accident occurred, it would have been communicated to either Accident Branch or to the Police Station by the public. But the alleged bus completed all its schedule trips in time without any hindrance. Therefore, the Transport Corporation prayed for dismissal of the claim petition.

4. Before the Tribunal, petitioner was examined as PW1 and Ex.P1 was marked and a Doctor viz., Dr.Mathiazagan was examined as PW2. Ex.P1 - FIR Copy, Ex.P2 - AR Copy, Ex.P3- Wound Certificate, Ex.P4- MK Nursing Home Chit, Ex.P5- Medical Bills, Ex.P6 - X-Ray, Ex.P7- DL copy, Ex.P8-Bank Book xerox copy, Ex.P9-Pan Card Xerox copy, Ex.P10-Disability Certificate and Ex.P11-X-ray were marked. On behalf of the Transport Corporation, one witness was examined as R.W.1, but no document was marked.

5. The Tribunal, after analyzing the entire evidence both oral and documentary, has come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the bus, belonging to the respondent/Transport Corporation and held that Transport Corporation is liable to pay the compensation. By coming to such conclusion, the Tribunal has made calculation under different heads and passed an award for a total compensation amount of Rs.1,41,100/-. The breakup details of the compensation are as follows:-

S.No	Head	Amount granted
1.	Loss of Earnings	Rs.15,000/-
2.	Transport to Hospital	Rs.3000/-
3.	Extra Nourishment	Rs.3,000/-
4.	Damages to Clothing & Articles	Rs.1000/-
5.	Medical expenses	Rs.4,100/-
6.	Pain and suffering	Rs.25,000/-
7.	Permanent disability	Rs.90,000/-
Total		Rs.1,41,100/-

6. Aggrieved against the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

7. The learned counsel appearing for the appellant/claimant would contend that the Tribunal has failed to appreciate the evidence of PW1 and PW2 and Exs.P2 to P6 and

Ex.P10 while assessing the compensation. PW1 had clearly deposed that the petitioner had sustained "Fracture of Right Leg and Multiple injuries all over the Body". After the accident, the claimant was immediately given first aid treatment in M.K.Nursing Home and transferred to Government Stanley Hospital, wherein, he was admitted as in-patient for 10 days and later continued his treatment for several months. Due to accident, he is unable to stand for a long time, unable to walk, climb steps squat on the floor and to drive the vehicle. The Tribunal has failed to award any compensation under the heads of i) Loss of amenities, ii) Loss of Expectation of life, iii) Loss of Mental Agony, iv) Future Expenses and v) Loss of earning power. He also contended that the Tribunal has awarded a meagre amount under the heads of i) Transport to Hospital, ii) Damage to clothing and Articles, iii) Medical Bills and iv) Compensation for continuing of permanent disability.

8. On the other hand, the learned counsel appearing for the respondent/Transport Corporation denied the averment that the petitioner was a driver, earning a sum of Rs.1,000/- per day. In the Accident Register, it was stated that the accident occurred on 11.03.2015 while riding a two wheeler hit by a MTC Bus, But in FIR, it is stated as 10.03.2015 at 17.45 hours. But the information received on 16.03.2015 at 13.30 hours. Further he contends that if the alleged accident said to be occurred, the public, the motorcyclist and the passengers in the bus would not let out the bus and crew freely. The bus completed all its schedule trips in times, without any hindrance. There are lot of chances to stop the MTC bus and to detain the bus enroute.

9. Heard learned counsel appearing for the appellant/claimant and as well as learned counsel appearing for the respondent/Transport Corporation.

10. On perusal of the records, it is observed that the appellant/claimant sustained injuries in the accident occurred on 10.03.2015 at 17.45 hours, while he was travelling in a two wheeler as a pillion rider. The respondent is a bus driver driven the bus in a rash and negligent manner and hit against the petitioner wherein he was a pillion rider and hence, the petitioner sustained grievous injuries. Therefore, he claimed a compensation for a sum of Rs.6,00,000/- under various heads.

11. On the other hand, the respondent totally denied the involvement of the said bus by denying the route and the other facts and the complaint is also a false complaint and totally denied the negligence on the part of the driver of the bus and in the absence of any proof, the sum claimed by the claimant is an excessive one.

12. It is seen from the award that the Tribunal perused the evidences adduced on both sides and also the documents viz., Ex.P1 which was registered and came to the conclusion that the negligence is on the part of the driver of the bus as stated in the FIR. In the cross-examination also, RW1 accepted the fact that the vehicle driven by him met with an accident. Hence, the involvement of the vehicle disputed by the respondent became a baseless one. Hence, negligence on the part of the driver is observed by the Tribunal while awarding compensation claimed by the injured appellant. The Tribunal by observing driving license of the injured person, has given a finding that he was a qualified driver and the nature of the injuries sustained by the claimant was also observed very much by verifying the document viz., Accident Register Copy, Wound Certificate and also the discharge summary issued by M.K.Nursing Home by way of verifying the Ex.P5. The Tribunal on perusing all these aspects has awarded a sum of Rs.1,41,100/-

13. It is also seen that though the income of the appellant is clearly proved the Tribunal has not properly considered the aspect of income and awarded only a sum of Rs.15000/-, for loss of income which is very meagre. It is also proved that the petitioner was under continuous treatment in the Hospital for the two fractures sustained by him. The Tribunal has not considered the treatment period and also the aspect that the health of the petitioner has to be restored completely. Hence the appellant sought for enhancement under the head of loss of earning and this court is of the view that awarding a sum of Rs.20,000/- would be a reasonable award on the head of loss of earning. With regard to transportation to Hospital and Nourishment, the Tribunal has awarded a meagre amount of Rs.3000/- each which needs to be modified. Taking into consideration that the petitioner underwent treatment in two hospital, the sum awarded under the head of transportation to hospital is enhanced to Rs.5000/-. The Tribunal erred in considering the amount under the head of 'Nourishment' and ignored that the petitioner is a driver and underwent surgery and needs extra nourishment to improve his health and hence the sum is enhanced to Rs.5000/- towards Nourishment.

14. When it is observed that the petitioner is a driver by occupation and suffered injuries on both the legs, loss of amenities has to be properly considered and the sum has to be enhanced to a reasonable amount. This court feels that the sum awarded under the head 'Pain and Suffering' is a reasonable one. In respect of 'disability', the grievance raised by the appellant is that the Doctor has assessed disability at 40%. But the Tribunal has not properly considered the fact that there are two fractures.

15. On the other hand, the respondent contended that the doctor is not a person who treated the injured person and his assessment is without any basic calculation and hence the assessment of the Tribunal at 30% is appropriate one. Hence in view of the fact that in the absence of any relevant document regarding treatment and other relevant medical records, this court opines that the assessment of the Tribunal is very much reasonable and the same does not require any modification.

16. Considering the above facts and circumstances of the case, this Court is of the view that the finding of the Tribunal in respect of disability aspect is just and fair. But, insofar as the compensation awarded by the Tribunal towards 'Loss of Earning' is concerned, as rightly pointed out by the learned counsel appearing for the appellant, the monthly income of the deceased fixed by the Tribunal at Rs.500/- is too low. Thus, taking into consideration of the fact that the petitioner is a qualified driver and possess a valid licence, this Court re-fixes the amount of Rs.20,000/- under the head of 'Loss of earnings'.

17. In so far the compensation awarded by the Tribunal under other heads, this court is of the view that it appears to be just and reasonable and hence, it stands confirmed. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

Sl.No.	Head	Sum awarded by the Tribunal	Sum awarded by this court
1.	Loss of Earnings	Rs.15,000/-	Rs.20,000/-
2.	Transport to Hospital	Rs. 3,000/-	Rs. 5,000/-
3.	Extra Nourishment	Rs. 3,000/-	Rs. 5,000/-
4.	Damages to Clothings & Articles	Rs. 1,000/-	Rs. 1,000/-
5.	Medical Expenses	Rs. 4,100/-	Rs. 4,100/-
6.	Pain and Suffering	Rs.25,000/-	Rs.25,000/-
7.	Permanent Disability	Rs.90,000/-	Rs.90,000/-
	Total	Rs.1,41,100/-	Rs.1,50,100/-

Thus, the claimants are entitled to a sum of Rs.1,50,100/- together with interest at the rate of 7.5% per annum.

18. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,41,100/- to Rs.1,50,100/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The respondent/Metropolitan Transport Corporation is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

(v) On such deposit being made, the claimant is at liberty to withdraw the same after following due process of law.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gv

To

1. The Motor Accident Claims Tribunal
The Principal Special Judge, Special Court
Under EC & NPDS Act, Chennai-104

copy to

The Section Officer

VR Section, High Court, Madras

+lcc to Mr.S.Sivakumar Advocate sr69944

C.M.A.No.2815 of 2019

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