

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HON'BLE Mrs. JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No.1901 of 2014

Thanikachalam @
Nagaraj

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram. .. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 21.08.2013 made in M.C.O.P.No.414 of 2011, on the file of Motor Accident Claims Tribunal, Additional Sub Judge, Tiruvannamalai.

For Appellant : Mrs.Subadra for
Mrs.Malar

For Respondent : Mr.S.V.Vasanthakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 21.08.2013 made in M.C.O.P.No.414 of 2011 on the file of the Motor Accident Claims Tribunal/Sub Judge, Thiruvannamalai.

2. The appellant is the claimant in M.C.O.P.No.414 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Judge, Thiruvannamalai. He filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.04.2011.

3. The main claim of the appeal is that the injured was 28 years at the time of accident and working as a driver earning Rs.10,000 per month. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred

due to the rash and negligent riding by the rider-cum-owner of the motorcycle belonging to appellant and directed the respondent to pay a sum of Rs.4,81,900/- as compensation to the appellant/claimant under the following heads:

S.No.	Heads	Compensation Awarded
1	Loss of earning	Rs.3,58,400/-
2	Permanent disability for eye	Rs.75,000/-
3	Pain and sufferings	Rs.25,000/-
4	Bills	Rs.8,500/-
5	Extra nourishment	Rs.5,000/-
6	Transport Expenses	Rs.5,000/-
7	Attender charges	Rs.5,000/-
	Total	Rs.4,81,900/-

4. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant would submit that the Tribunal failed to consider the nature of injuries sustained by the injured. The injured sustained injuries like crush injury in left upper leg, Grade III compound and communitated fracture of left leg, exposition of bone and muscle and tenderness. Crush injury of left eye irregular laceration 7X4X1.5 cm, left eye ball exposed. Fracture of posterior lateral wall of left maxilla and depressed fracture of left parietal bone. He was taken treatment as inpatient from 25.01.2011 to 03.06.2011 at Government Hospital, Chennai. Further treatment has also be taken at the same hospital. External fixation was also done. He further submitted that the Tribunal ought to have awarded more under the head permanent disability. The Doctors were examined as PW2 and PW3. PW2 assessed the disability as 70% for the fracture of left leg and for its disabilities. Further PW3 assessed the disability as 40% for the loss of vision in the left eye in total 110% but the Tribunal taken 70% as disability and awarded only Rs.3,48,400/- under the head permanent disability with wrong calculation. Hence, the Tribunal ought not to reduce the disability from 110 % to 70 %. He would further submit that the Tribunal ought to have awarded compensation under the head loss of income by considering his nature of injuries. Hence, he prays to enhance the award passed by the Tribunal.

6. Per contra, Mr.S.V.Vasanthakumar, learned counsel

appearing for the respondent denies all the allegations made by the appellant such as the petitioner was permanently disabled and that due to the accident, the petitioner is unable to do any work that the petitioner could not eke out his livelihood and that his future has become bleak. The learned counsel states that three persons had traveled in the two wheeler as against the seating capacity of two persons, which is against the Motor Vehicle Act and hence the driver of the two -wheeler lost his control and dashed against the respondent bus. Therefore, on this ground also the respondent is not liable to pay any compensation to the appellant. He further states that the appellant has not included the owner and insurance company of the Hero Honda splendor Plus two Wheeler bearing Registration No.T-25-D-9007 to the main petition who are the necessary parties to the petition for proper adjudication of the case. Hence, the appeal is liable to be dismissed for non-joinder of necessary parties to the petition.

7. I have heard the learned counsel appearing for the appellant as well as the respondent and perused entire materials on record.

8. From the materials on record, it is seen that P.W.2/Doctor assessed the disability as 70% for the fracture of left leg and for its disabilities and P.W.3/Doctor assessed the disability as 40% for the loss of vision in the left eye in total 110%. The Tribunal accepted the disability certificate issued by P.W.2 and P.W.3/Doctors as taken 70% as disability and granted a sum of Rs.75,000/- towards permanent disability for eye, and awarded as sum of Rs.3,58,400/- towards loss of earning at the rate of Rs.3,000/- per month. The accident occurred in the year 2011. The contention of the learned counsel for the appellant is that the Tribunal without considering the entire facts, awarded only a meager amount of compensation. The respondent filed a counter stating that on 25.04.2011, at about 7.45 am, the driver of the bus belonged to the respondent was ready to start the vehicle, three persons were traveling in a motor bike bearing registration No.TN 25 D 9007 in a rash and negligent manner without following the traffic rules and thereby the motor bike dashed against the front wheel of the respondent's bus and caused accident. Hence, it is stated that the driver of the bus which belongs to the respondent is not responsible for the accident which is acceptable. Further, since the compensation claimed by the claimant is exorbitant, the respondent prayed for dismissal of the appeal.

9. The contention of the learned counsel for the appellant with regard to the award of compensation is that the award amount is very meager, when he produced his driving license. The Court below has not taken consideration of the fact and awarded only Rs.3,000/- as monthly salary which based on the

Judgment reported in 2010 (1) TNMAC 504 in Koilpillai and 3 others Vs. Samuthirapandi and others, wherein it is stated that the accident took place in 2003 when the accident took place in the year 1999, the Hon'ble Apex Court took the monthly earnings at Rs.3,000/- in New India Assurance Co. Ltd V. Kalpana, 2007 (1) Tn MAC 1 (SC). When the monthly earnings was not established by sufficient materials. By applying the said decision, the monthly earnings could be fixed at Rs.3,000/- per month". Similarly in this case also the Court below erroneously fixed Rs.75,000/- for permanent disability and awarded Rs.3,58,400/- towards loss of earning based on the Judgment reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation.

10. In view of the above, this Court is of the considered opinion that the Tribunal has wrongly calculated and awarded a sum of Rs.3,58,400/- under the head loss of earning. Hence, it is modified as Rs.4,28,400/- (3000 X 12X 17 X 70 /100) towards loss of earning. Regarding the permanent disability, the petitioner has lost one of his eyes, hence, the amount awarded by the Tribunal is very less, hence, Rs.75,000/- has been awarded towards the head loss of eye. Further, as far as the head pain and suffering is concerned, Rs.25,000/- awarded by the Tribunal is very meager and also enhanced into Rs.50,000/-. Except the above modifications, other heads are confirmed as stated below:

S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Loss of earning (3000X12X17X70X100)	3,28,400	4,28,400	Enhanced (rightly calculated)
2	Permanent disability	75,000	75,000	Confirmed
3	Loss of eye	-	75,000	granted
4	Pain and Sufferings	25,000	50,000	Enhanced
4	Bills	8,500	8,500	Confirmed
5	Extra nourishment	5,000	5,000	Confirmed
6	Transport Expenses	5,000	5,000	Confirmed
7	Attender charges	5,000	5,000	Confirmed
	Total	4,81,900	6,51,900	Enhanced by Rs.1,70,000/-

(Rupees Six Lakhs Fifty One Thousand and Nine Hundred only)

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,81,900/- is hereby enhanced to Rs.6,51,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent 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 by making necessary applications before the Tribunal. The appellant is directed to pay necessary Court fee. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Additional Sub Judge,
The Motor Accident Claims Tribunal/
Sub Judge,
Tiruvannamalai.

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

+1 cc to M/s.M.Malar, Advocate Sr.No. 103717

C.M.A.No.1901 of 2014

BR (CO)
RMP (21/01/2021)

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