

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2951 of 2019

Pradeedp Kumar

... Appellant /
Claimant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation
(Branch - 1),
No.12, Ramakrishna Road,
Salem - 7.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.03.2019 made in M.C.O.P.No.586 of 2011 on the file of Motor Accident Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 11.03.2019 made in M.C.O.P.No.586 of 2011 on the file of Motor Accident Claims Tribunal, Sub Court, Sankari.

2.The appellant filed M.C.O.P.No.586 of 2011 on the file of Motor Accident Claims Tribunal, Sub Court, Sankari. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.06.2011. 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 and fixed 20% contributory negligence on the part of the appellant and 80% contributory negligence on the part of the respondent/Transport Corporation, awarded a sum of Rs.4,05,000/- as compensation. Not being satisfied with the above amount awarded by the Tribunal, and fixing 20% contributory negligence, the appellant has come out with the present appeal seeking enhancement of compensation and setting aside 20% contributory negligence.

3.In the grounds of appeal the appellant has contended that he was aged about 20 years at the time of accident. Due to the accident, he has sustained grievous injuries and fractures. He was admitted in Hospital as in-patient from 17.06.2011 to 22.06.2011. He under went surgeries and multiple plate and screws were fixed. After discharged from the Hospital the appellant could not do the work as he was doing earlier. The Medical Board examined the appellant and has given permanent disability at 22%. The Tribunal erroneously fixed 20% contributory negligence on the part of the appellant. The sum awarded by the appellant under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal after considering both oral and documentary evidence in proper perspective, has awarded compensation which is not excessive and prayed for dismissal of the appeal.

5.Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant and Mr.D.Venkatachalam, 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 Tribunal fixed 20% contributory negligence on the part of the appellant, on the grounds that the appellant was negligent in crossing the median on the right hand side. Ex.P3/rough sketch also reveals the same. Therefore 20% contributory negligence fixed by the Tribunal on the appellant is proper and the same does not warrant interference by this Court.

7.As far as quantum of compensation is concerned, the Medical Board assessed the disability of the appellant at 22%. The Tribunal fixed 22% disability and applied multiplier '17' and fixed a sum of Rs.7,000/- as monthly income of the appellant and awarded a sum of Rs.3,33,000/- towards loss of earning

capacity (Rs.7,000/- x 12 x 8 = Rs.15,12,000/-) (Rs.15,12,000/- x 22% = Rs.3,32,640/- is rounded off to Rs.3,33,000/-). Further, the Tribunal has awarded various amounts under the heads of extra nourishment, attendant charges, pain & suffering, transportation charges, medical expenses and loss of property. In view of the materials available on record, the compensation awarded by the Tribunal under the said heads are not excessive and does not require any modification.

8. In the result, the Civil Miscellaneous Appeal is dismissed. The compensation and the contributory negligence at 20% fixed on the appellant/claimant is confirmed. No Costs.

9. The appellant/claimant is entitled to 80% of the award amount i.e. Rs.3,25,000/-. The respondent/Transport Corporation is directed to deposit 80% of the award amount i.e. Rs.3,25,000/- along with interest and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.586 of 2011. On such deposit, the appellant/claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

Sd/-

Assistant Registrar
(Spl Cell.Retd Judges)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Sankari.

+2cc to Mr.C.Paraneedharan, Advocate SR.65443

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LN(CO)
CB(05/02/2020)

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