

In the High Court of Judicature at Madras

Dated : 21.11.2019

Coram :

The Honourable Mr.Justice R.MAHADEVAN

Civil Miscellaneous Appeal No.3387 of 2017

L.Vijayakumar

...Appellant/Claimant

Vs

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

...Respondent/Respondent

Prayer: APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the award dated 11.10.2017 made in MCOP.No.6812 of 2014 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), Chennai.

For Appellant : Ms.Ramya V.Rao
For Respondent : Mr.S.Sivakumar

JUDGMENT

The claimant is before this Court, not satisfied with the award passed by the Motor Accidents Claims Tribunal (IV Judge, Small Causes Court), Chennai (hereinafter called the Tribunal) in a motor accident causing grievous injuries to the claimant - appellant, aged 39 years.

2. The accident took place on 26.1.2014 at 11.30 AM. On the date of accident, the appellant - claimant, as a pedestrian, was proceeding from East to West direction at Mambakkam Main Road, Veerabadran Nagar, Narayana Chetty Kulam before Sri Arunachala Ceramic Centre. At that time, the bus bearing Regn.No.TN-01-N-5450 belonging to the respondent herein, driven in a rash and negligent manner, came from behind and hit against the appellant - claimant, on account of which, he sustained injuries of femur, fracture distal third and multiple injuries all over the body.

3. At the time of accident, the appellant - claimant was working as a driver, earning a sum of Rs.20,000/- per month. Immediately after the accident, he was taken to the Government Hospital, Tambaram and thereafter he was taken to the Government General Hospital, Chennai-3 and had continued to take

treatment. He could not able to do any work as before. The respondent is the owner of the bus and is liable to pay compensation. Therefore, the appellant - claimant filed a claim petition before the Tribunal seeking a compensation of Rs.6,00,000/- together with interest and costs from the respondent herein.

4. The respondent resisted the claim petition by filing a counter, in which, they denied the aspect that the accident took place due to the rash and negligent driving by the driver of the bus belonging to them. According to them, the driver of the bus belonging to them drove the vehicle with due care and caution fully observing the traffic rules; that the appellant - claimant had to prove the age, occupation and monthly income; that the respondent herein is not liable to pay any compensation and that the claims under the various heads are not sustainable. Ultimately, the respondent sought to dismiss the claim petition with costs.

5. The Tribunal framed four points for consideration namely,

(i) Whether the accident was due to the rash and negligent driving by the driver of the respondent ?

(ii) Whether the appellant - claimant was entitled to any compensation?

(iii) What was the quantum of compensation the appellant - claimant would be entitled to ? and

(iv) From whom, the appellant - claimant was entitled for the compensation ?

6. Before the Tribunal, the appellant - claimant examined himself as PW1 apart from examining one Dr.K.J.Mathiazhagan as PW2, who issued the Disability Certificate and marked Ex.P1 - Copy of the First Information Report, Ex.P2 - Discharge Summary given by Government General Hospital, Ex.P3 - Discharge Summary given by Dr.Kamakshi Hospital, Ex.P4 - Transport Bills, Ex.P5 - O.P.Chit, Ex.P6 - Hospital Bills, Ex.P7 - Medical Bills, Ex.P8 - Lab Reports, Ex.P9 - old X-ray, Ex.P10 - copy of the first page of the appellant - claimant's bank passbook, Ex.P11 - copy of the appellant-Claimant's Aadhar Card, Ex.P.12 - copy of the Driving Licence, Ex.P13 - Future Estimation Certificate, Ex.P14 - X-ray and Ex.P15 - Disability Certificate issued by PW2. On the side of the respondent, one Mr.Balu (conductor of the bus) was examined. However, no documents were marked on their side. Ultimately, the Tribunal has awarded a sum of Rs.2,38,500/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and with costs. Contending that the compensation awarded by the Tribunal is very low, the appellant - claimant is before this Court.

7. The learned counsel for the appellant - claimant has contended that the Tribunal failed to consider the nature of injuries sustained by the appellant - claimant, in a proper perspective; that the appellant - claimant sustained injuries all over his body; that though PW2 - Doctor assessed the

disability at 35%, the Tribunal reduced it to 25% without any reason; and that the compensation awarded under various heads is on the lower side.

8. The learned counsel for the respondent / Transport Corporation has reiterated the contentions raised in the counter filed by them before the Tribunal and sought to sustain the award.

9. This Court has heard the learned counsel on either side. This Court has also carefully considered the contentions raised on either side and perused the records.

10. With regard to negligence, the Tribunal, after considering the evidence of PW1 and Ex.P1 - the First Information Report, found that though the respondent denied the manner of accident as well as the nature of injuries sustained by the appellant - claimant, Ex.P1 would substantiate the case of the appellant.

11. Though the respondent had chosen to examine the conductor of the bus as RW1, he simply denied the accident, but had not produced any supporting document to that effect. However Ex.P1 clearly spoke about the manner of accident and the negligence on the part of the driver of the bus. The Tribunal found that the accident was caused due to the rash and negligent driving by the driver of the bus belonging to the respondent herein. This Court does not want to unsettle the settled things and is of the view that the Tribunal is right in its conclusion, in the absence of any contra evidence let in by the respondent. In the absence of any contra evidence to dislodge the said finding, this Court does not find any illegality or infirmity in the award passed by the Tribunal with regard to negligence aspect. That apart, the driver of the bus, who is the best evidence to speak about the accident was not examined before the Tribunal, which is also fatal to the case of the respondent in this respect.

12. With regard to quantum, it is seen that the appellant - claimant examined the Doctor (P.W.2), who gave the Disability Certificate. The doctor assessed the disability percentage at 35%. When the doctor, who issued the disability certificate, himself assessed the disability at 35%, it is not known as to how the Tribunal reduced the percentage of disability to 25%. It is crystal clear that only because of the accident, the appellant - claimant sustained injuries and that he was also taking treatment for a considerable period. Hence, the disability assessed by PW2 cannot be brushed aside unless the contrary is proved otherwise. Therefore, the disability as assessed by the Doctor at 35% is taken as such. Accordingly, a sum of Rs.1,05,000/- (Rs.3000/- per percentage of disability) is awarded under the head 'disability' instead of Rs.75,000/- awarded by the Tribunal.

13. The Tribunal further awarded a sum of Rs.25,000/- towards pain and suffering, Rs.500/- towards damage to clothes

and Rs.1,06,214/- towards medical expenses, which commensurates with the nature of injuries and the period of treatment by the claimant and hence this Court holds that the amounts awarded under those heads are confirmed.

14. It is seen that the Tribunal has awarded a sum of Rs.2,500/- towards extra nourishment, which appears to be on the lower side. Hence, this Court enhances the amount under this head to Rs.10,000/-. Further, the Tribunal awarded a sum of Rs. Rs.2,500/- towards transport to hospital, which also appears to be on the lower side. Hence, this Court enhances the amount under this head to Rs.5,000/-. The Tribunal awarded a sum of Rs.1,800/- towards attender charges, which also appears to be on the lower side and hence, considering the cost of labour involved in these days, this Court enhances the amount under this head to Rs.10,000/-. The Tribunal awarded a sum of Rs.20,000/- towards loss of income, which is also meagre. Therefore, this Court enhances the amount under this head to Rs.45,000/-. Again, the Tribunal awarded a sum of Rs.2,500/- towards loss of amenities, which is very low and hence, this Court enhances the amount under this head to Rs.10,000/-.

15. Further, definitely the appellant - claimant cannot continue his avocation as driver as before. Hence, the amount of Rs.2,500/- awarded towards future medical expenses, in the mind of this Court, appears to be on the lower side, as the appellant - claimant will have to spend some more money to take care of his own self because of the injuries he sustained in the accident. Hence, this Court feels it appropriate to award a sum of Rs.20,000/- towards future medical expenses instead of Rs.2,500/-.

16. In the light of the above, the above Civil Miscellaneous Appeal is partly-allowed by arriving the total compensation at Rs.3,36,714/-, which is rounded off to Rs.3,36,700/-, together with interest at the rate of 7.5% per annum from the date of petition. The respondent is directed to deposit the modified amount of compensation, as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the entire amount to the Savings Bank Account of the appellant - claimant through RTGS within one week thereafter. No costs.

Sd/-

Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
(IV Judge, Small Causes Court), Chennai.

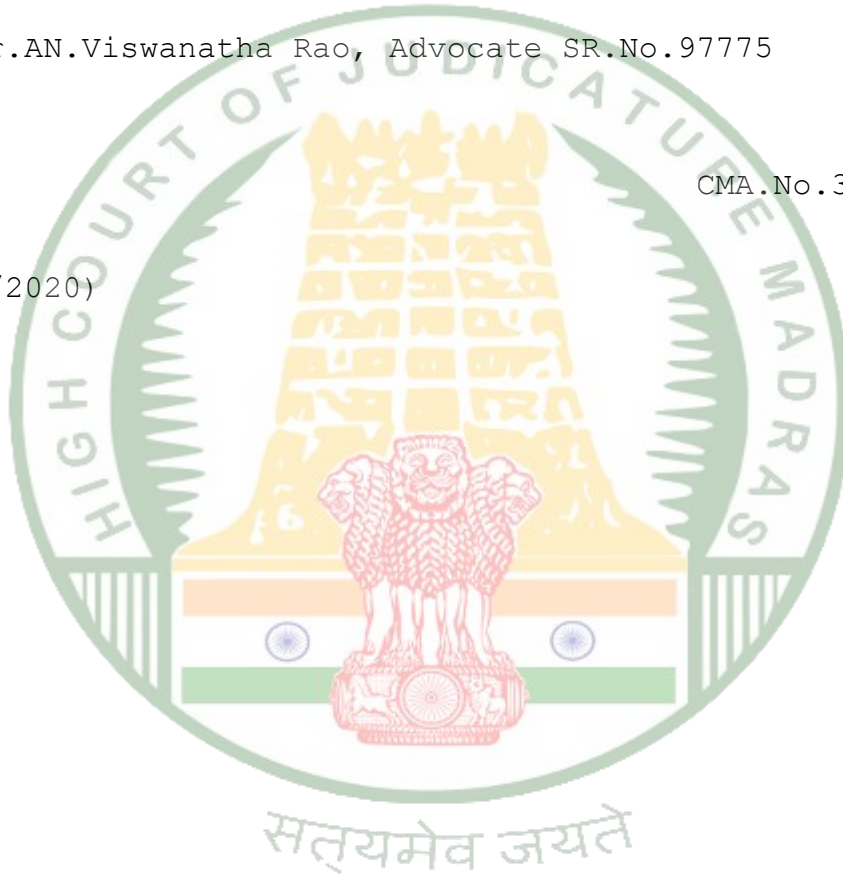
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VR Section, High Court, Madras.

+1cc to Mr.S.Sivakumar, Advocate SR.No.97409

+2cc to Mr.AN.Viswanatha Rao, Advocate SR.No.97775

CMA.No.3387 of 2017

SSV(CO)
GMY(10/11/2020)



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