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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1083 of 2013

Kuppan

..Appellant/Petitioner

Vs.

Managing Director,
Tamilnadu State Transport Corporation,
Vellore.

..Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.03.2011, made in M.C.O.P. No.169 of 2003, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal) Thiruvannamalai.

For Appellant : Mrs. A. Subadra
for Mr. F. Terry Chella Raja

For Respondent : Mr. K.J. Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 30.03.2011, made in M.C.O.P. No.169 of 2003, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal) Thiruvannamalai.

2.The appellant filed M.C.O.P. No.169 of 2003, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal) Thiruvannamalai, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.03.2002.

3.According to the appellant, on the date of accident at about 3.30 am, when he was riding his Hero Magistic Motorcycle bearing Registration No. TN-32-Y-1832, in Thirukovilur Madapattu Road, while crossing Manakuppam Village, the driver of the Bus bearing Registration No. TN-23-N-1439, belonging to the



respondent-Transport Corporation, drove the same in a rash and negligent manner, dashed against the Motorcycle and caused accident. The accident occurred due to rash and negligent driving by the driver of the Bus. In the accident the appellant suffered multiple injuries and fracture. For the injuries suffered by him, he has filed the claim petition, claiming compensation against the respondent as owner of the said Bus.

4.The respondent - Transport Corporation filed counter statement and denied all the averments made by the appellant. According to the respondent, on the date of accident, when driver of the Bus bearing Registration No. TN-23-N-1439 was driving the Bus carefully from Vellore to Trichy, following the traffic rules, the appellant drove the Motorcycle rash and negligently in zig zag manner. On seeing the negligent riding of Motorcycle by the appellant, the driver of the Bus stopped the Bus and accident occurred when the appellant dashed against the Bus stationed in order to avert the accident. Hence, the respondent-Transport Corporation is not liable to pay compensation to the appellant. The claim petition is bad for non-joinder of owner and insurer of the motor cycle as necessary parties. The appellant has to prove his age, avocation, manner of accident, injuries sustained and treatment taken, to claim compensation and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined himself as P.W.1, examined Dr.Ravindran as P.W.2, Dr.Somasundaram as P.W.3 and marked 11 documents as Exs.P1 to P11. The respondent examined the driver of the Bus as R.W.1, but did not let in any documentary evidence.

6.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 and directed the respondent-Transport Corporation to pay a sum of Rs.1,04,000/- as compensation to the appellant.

7.Not being satisfied with the amounts awarded by the Tribunal in the award dated 30.03.2011, made in M.C.O.P. No.169 of 2003, the appellant has come out with the present appeal.

8.The learned counsel appearing for the appellant contended that the appellant suffered fracture and multiple injuries all over the body. The appellant examined himself as P.W.1 and examined two Doctors as P.W.2 and P.W.3 and proved the nature of injuries sustained by the appellant. P.W.2 Doctor examined the medical records and clinically examined the appellant and certified that appellant suffered 35% disability for shoulder fracture and for loss of eye sight, P.W.3 Doctor assessed 65%



disability. The appellant was working as a Coolie. Due to the injuries sustained in the accident, he could not continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method and granted compensation for 100% disability. The appellant has taken treatment as in-patient at Thirukoilur Government Hospital, Villupuram Government Hospital and Government General Hospital, Chennai. The Tribunal failed to award any amount towards mental agony, damages to clothes, loss of amenities and medical expenses. The amounts awarded by the Tribunal towards loss of income, extra nourishment, attendant charges, pain and suffering and transportation are meagre and prayed for enhancement of compensation.

9.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the appellant has not proved that he suffered functional disability and loss of earning power. The assessment of P.W.2 and P.W.3 Doctors are excessive. The accident is of the year 2002. The Tribunal granted excessive amount of Rs.70,000/- towards disability for 35% disability. In the Accident Register, nothing is mentioned about the injuries in the eye. The Medical Board, Vellore examined the appellant and certified that appellant suffered only 20% of disability. In view of report of the Medical Board, Vellore, the appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

10.Heard learned counsel appearing for the appellant as well as the respondent-Transport Corporation and perused the materials available on record.

11.From the materials on record, it is seen that it is the contention of the appellant that due to the injuries sustained in the accident, he suffered fracture, disability and he could not continue his work as Coolie. The appellant examined two Doctors as P.W.2 and P.W.3. P.W.2 Doctor examined the appellant and certified that appellant suffered 35% disability for shoulder fracture and P.W.3 Eye Doctor assessed that the appellant suffered 65% disability for loss of eye sight. The Tribunal awarded compensation towards disability at the rate of Rs.2,000/- per percentage for 35% disability and Rs.15,000/- towards loss of eye sight and also awarded compensation under other heads.

12. When the Civil Miscellaneous Appeal was taken up for hearing on 28.02.2020, the learned counsel appearing for the appellant contended that appellant suffered 100% disability. Hence, this Court by the order dated 28.02.2020, directed the appellant to appear before the Dean of Thiruvannamalai Medical College and Hospital, Thiruvannamalai on 04.03.2020 and directed



the Dean to depute a team of Doctors to examine the appellant and give a Medical Report with regard to functional disability of the appellant. The Dean, Thiruvannamalai Medical College and Hospital, by the letters dated 24.03.2020 and 02.06.2020 bearing Reference No.1523/MB/2020, addressed to this Court, informed that the appellant has not appeared before the Medical Board as directed by this Court.

13. From the award of the Tribunal it is seen that it is the contention of the respondent-Transport Corporation that appellant did not suffer any injury or disability in the eye and referred to Ex.P4 - Accident Register to contend that in the Accident Register, nothing is mentioned with regard to injuries in the eye and disability assessed by P.W.3 Doctor is not due to the injuries in the accident. The Tribunal without properly appreciating the Accident Register and contentions of the respondent properly, has awarded a sum of Rs.15,000/- for loss of eye sight. The accident is of the year 2002. The Tribunal awarded a sum of Rs.70,000/-, excessively for 35% disability, when the appellant is entitled to only Rs.35,000/- for 35% disability. Further, the Medical Board, Vellore, by the report dated 14.02.2020 made in R.C.No.800/MB/2020, assessed the disability of the appellant only as 20%. The appellant has taken treatment as in-patient in Hospital only for 4 days. The amounts granted by the Tribunal under different heads are not meagre. Considering the entire materials on record, this Court is of the considered view that appellant is not entitled for any enhancement of compensation.

14. In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.1,04,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The respondent -Transport Corporation is directed to deposit the award amount, along with interest and costs, less the amount already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.169 of 2003. On such deposit, the appellant 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. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

gsa



To

1.The Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1 CC to M/s.M. Malar, Advocate sr 41779

+1 CC to Mr.K.J. Sivakumar, Advocate sr 41893.

C.M.A.No.1083 of 2013

AK(CO)
SP(24/08/2021)