

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2020

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1788 of 2010

T.Palani
S/o.Thavamani

... Appellant/Claimant

- Vs -

The General Manager,
Tamil Nadu Transport Corporation,
(Villupuram) Division,
Vellore.

... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the order dated 23.12.2008 made in M.C.O.P.No.379 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge, FTC), Tirupattur, Vellore District.

For Appellant : Mrs.Subadra

For Respondent : Mr.S.V.Vasanthakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant, aggrieved by the order dated 23.12.2008 made in MCO.P.No.379 of 2008 by the Motor Accident Claims Tribunal, Additional District Judge, FTC, Tirupattur, Vellore District by raising the following grounds:-

1. The Tribunal has failed to consider the income of the injured as Rs.7,000/- when there is no contra evidence filed by the respondent.
2. The Tribunal awarded a sum of Rs.20,000/- on the head of loss of income for a period of 5 months and ought to have been awarded a sum of Rs.35,000/-.
3. The Tribunal failed to appreciate the evidence of PW-2 and Exs.A2, A6, A7 and A15 in a proper perspective manner and

awarded a sum of Rs.60,000/- for permanent disability without adopting multiplier method.

2. The case of the appellant is that on 01.10.2006 at about 1.30.p.m when the claimant was riding as a pillion rider in a Motorcycle bearing Registration No.TN 23-K-6844 along with one Balamurugan for purchasing groceries and returned to Thiruvannamalai Road nearing Venkateshwara Nagar, the respondent bus bearing Registration No.TN 23 N 1262 was driven by its driver in a rash and negligent manner, dashed against the appellant's vehicle while taking a curve. Due to the said accident, the appellant/claimant and other person had fallen down and sustained grievous injuries. The claimant was admitted at M.N.Orthopedic Hospital, Chennai and was taking treatment from 21.10.2006 to 17.07.2007. Due to the said injuries sustained, the claimant was not in a position to work as usual and he had permanent partial disability and filed a claim petition seeking an amount of Rs.7,00,000/- as compensation. He was originally directed to get admitted in CMC Hospital, Vellore and thereafter, he was taken to M.N.Orthopedic Hospital, Chennai for further treatment and a surgery was performed to him on 02.10.2006. A case in Crime No.1066 of 2006 was registered for the offences under Sections 279 and 337 of IPC.

3. A counter statement was filed by the respondent denying all the averments and had stated that the driver of the respondent drove the vehicle with due care and caution observing traffic rules and hence, the driver of the respondent is not responsible for the alleged accident. Therefore, the respondent prayed for dismissal of the claim petition.

4. On the side of the claimant, two witnesses have been examined and Exs.P1 to P16 were marked. On the side of the respondent one Arivazhagan was examined and no exhibits were marked. The Court below, after considering the oral and documentary evidence, has awarded a sum of Rs.1,58,387/- as compensation with 7.5% interest, by judgment dated 23.12.2008. Aggrieved by the said judgment, the claimant preferred the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that the appellant/claimant was self-employed and was earning a sum of Rs.7,000/- per month and after the accident, he was not in a position to do any work. He would submit that the Court below erroneously awarded a sum of Rs.1,58,387/- when the claim was for Rs.7,00,000/-. He would further submit that the future prospects has not been taken into consideration and only a meagre amount awarded as loss of income and hence, he prays for enhancement on various heads.

6. The learned counsel for the respondent-Transport Corporation submitted that the amount awarded is just and reasonable and the various aspects have been considered by the Tribunal and awarded the amount, which has to be sustained.

7. Heard both sides and perused the available materials on record.

8. On going through the materials available on record, the Court below, after considering the various aspects, has come to the conclusion that only due to the rash and negligent act of the driver of the respondent, the accident had occurred and fastening the liability on the respondent. On going through the medical bills and certificates available on record, it is seen that only a sum of Rs.3,622.61/- has been spent for medical expenses and for taking further treatment at M.N.Orthopedic hospital, Rs.30,688/- has been spent and various medical bills would show that a sum of Rs.44,387/- has been spent for Medical expenses and the same is awarded. The Court below awarded a sum of Rs.25,000/- for pain and sufferings, for nutrition a sum of Rs.5,000/-, for loss of income a sum of Rs.20,000/-, for disability a sum of Rs.60,000/-. No attendant charges was awarded and this Court is inclined to award a sum of Rs.5,000/- on the head. Regarding the injuries sustained by the appellant, the Doctor, who had given the disability certificate, fixed his disability as 60% and the Court below has rightly awarded a sum of Rs.60,000/- for disability factor, which is reasonable. The Court below awarded a sum of Rs.4,000/- for transportation and the same can be increased to a sum Rs.10,000/- as the claimant was taken to various hospital for treatment. Regarding the future income, this Court is not inclined to award any amount in the absence of any evidence as he is only a pawn broker. The final amount of compensation now determined is tabulated below:-

Heads	Amount (Rs.)
Medical Expenses	44,387
Pain and sufferings	25,000
Nutrition	5,000
Attender Charges	5,000
Loss of income	20,000
Transportation	10,000
Disability of 60% at the rate of Rs.1000/- per percentage	60,000
Total	1,69,387

The same is rounded to Rs.1,69,400/-.

7. This Civil Miscellaneous Appeal is partly allowed. The respondent is directed to deposit Rs.1,69,387/-, less if any amount already deposited, with interest at 7.5% per annum, within eight weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw same forthwith by filing formal petition. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
FTC, Tirupattur, Vellore District.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.A.Subadra, Advocate, S.R.No. 682

C.M.A.No.1788 of 2010

RSV(CO)
GN(01/09/2020)

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