

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.1677 OF 2013 AND 479 OF 2015

AND

M.P.NO.1 OF 2015

C.M.A.No.1677 of 2013

Soundararajan .. Appellant/Petitioner

Vs.

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Tiruvannamalai Division. .. Respondent/Respondent

C.M.A.No.479 of 2015

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Tiruvannamalai Division. .. Appellant/Respondent

Vs.

Soundararajan ... Respondent/Petitioner

Common Prayer:

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 02.01.2013 made in M.C.O.P.No.392 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai.

In C.M.A.No.1677 of 2013

For Appellant : Mr.F.Terry Chellaraja
For Respondent : Mr.K.J.Sivakumar

In C.M.A.No.479 of 2015

For Appellant : Mr.K.J.Sivakumar
For Respondent : Mr.F.Terry Chellaraja

COMMON JUDGMENT

C.M.A.No.1677 of 2013 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 02.01.2013 made in M.C.O.P.No.392 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai.

C.M.A.No.479 of 2015 is filed by the Transport Corporation challenging the award dated 02.01.2013 made in M.C.O.P.No.392 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai.

2.Both the appeals are arising out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed the claim petition in M.C.O.P.No.392 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.05.2010.

4.According to the claimant, on the date of accident, i.e., on 30.05.2010 at about 1.25 p.m., while he was riding in his motorcycle from Melapunchai, Chengam taluk towards Pachal, in the left side of the road, the bus belonging to the respondent/Transport Corporation, which came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle in which claimant was travelling and caused the accident. Due to the accident, the claimant sustained grievous injuries and therefore, he filed the above claim petition claiming compensation against the respondent.

5.The respondent/Transport Corporation filed counter statement denying the averments made by the claimant and stated that the accident did not occur due to rash and negligent driving by the driver of the bus as alleged by the claimant. On the other hand, the accident has occurred only due to rash and negligent riding by the claimant, the rider of the motorcycle. The claimant did not possess valid driving license at the time of accident. The owner and insurer of the motorcycle are not made as parties. Therefore, the claim petition is bad for non-joinder of owner and insurer of the motorcycle and therefore, the respondent/Transport Corporation is not liable to pay any compensation to the claimant. The respondent/Transport Corporation has also denied the age, avocation and income of the claimant. In any event, the compensation claimed by the claimant

is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the claimant examined himself as P.W.1, one Sivaraj, pillion rider of the motorcycle, was examined as P.W.2, Dr.Somasundaram, was examined as P.W.3, Dr.Ravindran, was examined as P.W.4 and marked fifteen documents as Exs.P1 to P15. The respondent/Transport Corporation examined the driver of the bus as R.W.1 and did not file any document.

7.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.3,08,355/- as compensation to the claimant.

8.Against the said award dated 02.01.2013 made in M.C.O.P.No.392 of 2010, the respondent/Transport Corporation has come out with C.M.A.No.479 of 2015. Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.1677 of 2013 seeking enhancement of compensation.

9.The learned counsel appearing for the claimant contended that the claimant was aged 33 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as a mason. The Tribunal erred in fixing a meagre sum of Rs.3,000/- as monthly income of the claimant. The claimant suffered grievous injuries all over the body and has taken treatment initially in the Government hospital, Tiruvannamalai, subsequently, in Apollo hospital, Chennai, from 30.05.2010 to 16.06.2010, then he has taken treatment in Sankara Netralaya, Chennai and Vivekananda Eye hospital, Tiruvannamalai. To prove the injuries, the claimant examined two doctors as P.W.3 and P.W.4. P.W.3/Dr.Somasundaram, has deposed that nerve in the right eye was completely damaged, the claimant has totally lost his right eye sight and assessed the disability as 45% in respect of eye. P.W.4/Dr.Ravindran, Ortho specialist, has assessed the disability of the claimant as 45% in respect of fracture of left clavicle bone, left mandible and maxilla bones. The Tribunal reduced the disability to 45% and awarded only a sum of Rs.90,000/- towards disability converting the disability assessed by two doctors for whole body. The Tribunal ought to have adopted multiplier method for granting compensation. The Tribunal erred in rejecting certain medical bills produced by the claimant and the Tribunal ought to have awarded entire amount towards medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of C.M.A.No.479 of 2015 filed by the respondent/Transport Corporation.

10.The learned counsel appearing for the respondent/Transport Corporation contended that the driver of the bus drove the bus in moderate speed, while the claimant along with one Sivaraj, the pillion rider, rode the motorcycle in a drunken mood in a rash and negligent manner, dashed against the bus and caused the accident. The Tribunal failed to consider the counter statement filed by the respondent and evidence of the driver of the bus as R.W.1. The owner and insurer of the motorcycle are necessary parties and the claimant has not impleaded them as parties in the claim petition. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and for dismissal of C.M.A.No.1677 of 2013 filed by the claimant.

11.Heard the learned counsel appearing for the claimant as well as the respondent/Transport Corporation and perused the entire materials available on record.

12.It is the contention of the claimant that while he was riding the motorcycle in a moderate speed, the bus belonging to the respondent/Transport corporation, driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. To substantiate the said contention, the claimant examined himself as P.W.1 and marked the F.I.R., which was registered against the driver of the bus, as Ex.P1. On the other hand, it is the contention of the respondent/Transport Corporation that the claimant in a drunken mood rode the motorcycle and dashed against the bus. To substantiate the said contention, the respondent examined the driver of the bus as R.W.1. From the materials available on record, it is seen that the respondent has not produced any materials to show that the claimant was in intoxicated condition at the time of accident and he was solely responsible for the accident. The respondent has not given any objection to the F.I.R. being registered against the driver of the bus and has not given any complaint against the claimant. In such circumstances, the Tribunal accepting the evidence of P.W.1 and Ex.P1/F.I.R. rightly held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the claimant examined P.W.3, eye specialist and P.W.4, Ortho specialist, to prove the injuries sustained by him in the accident. Both the Doctors have assessed the disability of the appellant as 45% each in respect of eye and fractures. The Tribunal reduced the disability to 45% for whole body and awarded a sum of Rs.90,000/- (Rs.2,000/- X 45%) towards disability at the rate of Rs.2,000/- per percentage of

disability. The said reduction of disability by the Tribunal is erroneous. The respondent did not let in any contra evidence to disprove the evidence of the Doctors and the disability certificates marked as Exs.P10 & 12. Therefore, the claimant is entitled to compensation for 90% disability. The accident is of the year 2010 and hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, a sum of Rs.2,70,000/- (Rs.3,000/- X 90%) is awarded towards disability.

13(i).As far as medical expenses is concerned, the Tribunal considering each and every bill produced by the claimant, rejected some bills on the ground that they are issued without name of the claimant and awarded a sum of Rs.1,48,560/- towards medical bills and Rs.14,795/- towards medical bills & transportation. In view of the above, the compensation awarded by the Tribunal towards medical bills is proper and the same does not warrant any interference by this Court.

13(ii).According to the claimant, at the time of accident, he was working as a mason and was earning a sum of Rs.10,000/- per month. The claimant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the claimant, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the claimant and awarded a sum of Rs.15,000/- (Rs.3,000/- X 5) towards loss of income for five months. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- is fixed as monthly income of the claimant. Thus, the compensation awarded by the Tribunal towards loss of income during the treatment period is enhanced to Rs.40,000/- (Rs.8,000/- X 5).

13(iii).The claimant contended that he has taken treatment initially in the Government hospital, Tiruvannamalai, subsequently, in Apollo hospital, Chennai, from 30.05.2010 to 16.06.2010, then he has taken treatment in Sankara Netralaya, Chennai and Vivekananda Eye hospital, Tiruvannamalai. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the claimant, Rs.9,000/- and Rs.15,000/- are awarded towards attendant charges and loss of amenities respectively. Rs.35,000/- awarded by the Tribunal towards pain and suffering is excessive and the same is hereby reduced to Rs.25,000/-. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent disability	90,000	2,70,000	Enhanced
2.	Medical bills	1,48,560	1,48,560	Confirmed
3.	Medical bills and transportation	14,795	14,795	Confirmed
4.	Extra nourishment	5,000	5,000	Confirmed
5.	Loss of income	15,000	40,000	Enhanced
6.	Pain and suffering	35,000	25,000	Reduced
7.	Attendant charges	-	9,000	Granted
8.	Loss of amenities	-	15,000	Granted
	Total	3,08,355	5,27,355	Enhanced by Rs.2,19,000/-

14. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.3,08,355/- is hereby enhanced to Rs.5,27,355/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS VI)

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Sub Assistant Registrar

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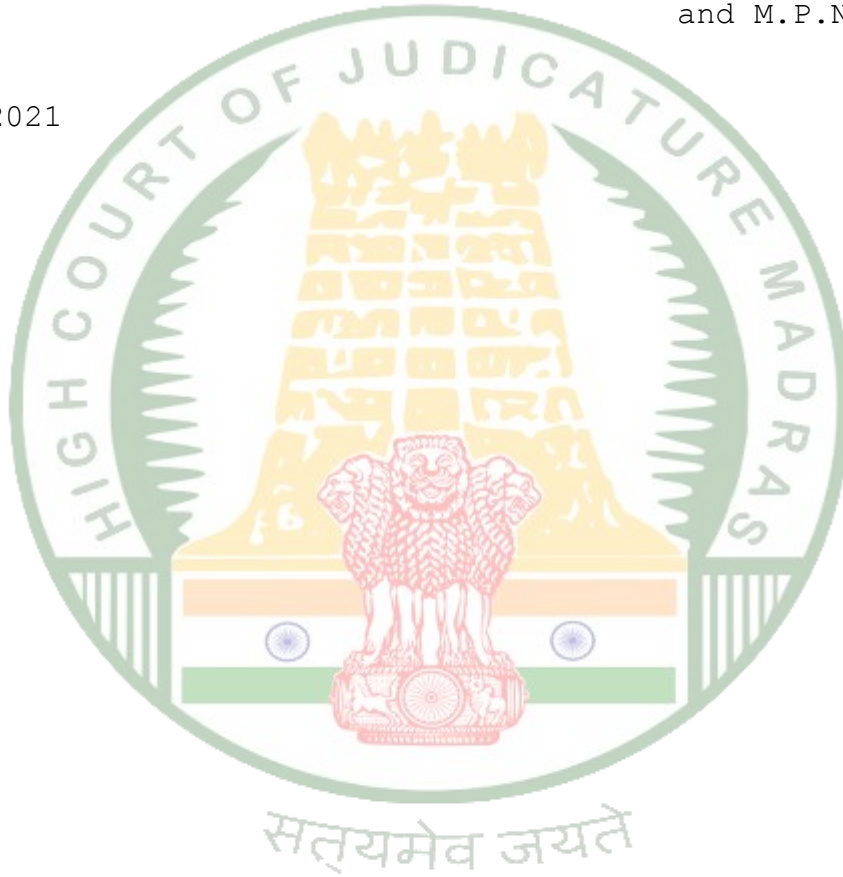
To

1. The Principal Subordinate Judge
The Motor Accidents Claims Tribunal
Tiruvannamalai.
2. The Section Officer
V.R.Section, High Court, Chennai.

+lcc to Mr.F.Terry Chellaraja, Advocate, S.R.No.24605

C.M.A.Nos.1677 of 2013 and 479 of 2015
and M.P.No.1 of 2015

SVI (CO)
CS/25/01/2021



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