

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NOS.147 AND 148 OF 2012

1. S.Gnanaprakasam ...Appellant in C.M.a.No.147 of 2012
2. P.Sadiq Ali ...Appellant in C.M.a.No.148 of 2012

Vs

State Express Transport Corporation Ltd.,
rep. by its Managing Director,
Pallavan Salai, Chennai 600 002.

.... Respondent in both the appeals

COMMON PRAYER:

These Civil Miscellaneous Appeals have been against the award passed by the Motor Accidents Claims Tribunal, Additional District Sessions Judge, (Fast Track Court No.III), City Civil Court, Chennai in M.C.O.P.Nos.5110 and 5112 of 2002 dated 30.01.2010.

(For both appeals)

For appellants : Mr.T.G.Balachandran

For Respondent : Mr.K.Kathiresan

C O M M O N J U D G M E N T

These appeal have been filed by the appellants/claimants seeking enhancement of the compensation awarded in Motor Accidents Claims Tribunal, Additional District Sessions Judge, Fast Track Court No.III in M.C.O.P.Nos.5110 and 5112 of 2002 dated 30.01.2010.

2.The case of the appellants is that on 14.11.2002 at about 22.45 hours when the second appellant was riding a motor cycle bearing Registration No. TN-07-P-3209, at Anna Salai near Operai Hotel and the first appellant was proceeding as a pillion rider, the respondent Corporation bus bearing Registration No. TN-07-N-9378 came behind the motor cycle and hit the motor cycle. Due to

the impact the appellants fell down from the motor cycle and sustained injuries. Hence the first appellant/Gnanaprakasam and the second appellant/P. Sadiq Ali filed M.C.O.P.Nos.5110 and 5112 of 2002 seeking Rs.1,50,000/- and Rs.2,25,000/- as compensation respectively.

3.The Tribunal Considering the materials available on record awarded a sum of Rs.26,000/- and Rs.42,000/- towards the respective M.C.O.P.Nos with interest at 9% p.a from the date of petition till the date of realization.

4.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come forward with these appeals before this Court.

5.In order to prove the claim before the Tribunal, on the side of the appellant three witnesses were examined viz., P.W.1 to P.W.3 and 13 documents viz., Ex.P1 to Ex.P13 were marked. The respondent/Transport Corporation has neither let in any evidence nor marked any documents before the Tribunal.

6.Before the Tribunal, the first appellant had filed a claim petition, wherein it has been stated that he was 26 years at the time of accident. Due to the accident his left side head injured and left leg hip crack fracture and multiple injuries all over the body. With regard to avocation he is a sales man and earning Rs.2,000/- per month. Due to the injuries sustained in the accident, he was not able to continue his job as before. Hence, he prayed to award Rs.1,50,000/- as compensation under several heads.

7.Before the Tribunal, the second appellant had filed a claim petition, wherein it has been stated that he was 21 years at the time of accident. Due to the accident he sustained fracture in Maxilla left, fracture in left leg, left eye injury and facial injury and multiple injuries and sustained multiple injuries all over the body. With regard to avocation he is self employed and thereby earning Rs.4,000/- per month. Due to the injuries sustained in the accident, he was not able to continue his job as before. Hence, he prayed to award Rs.2,25,000/- as compensation under several heads.

8.The respondent/Transport Corporation also filed a counter before the Tribunal and they have resisted their claim by stating that the accident occurred due to the negligent on the part of the motor cyclist. It was also stated in the said counter that the claimant was riding his motor cycle at a very high speed without adopting safety procedures. In any event the claim of the appellants is exorbitant.

9. On a perusal of the order passed the Tribunal, the negligence aspect was discussed elaborately. The Appellants were examined as P.W.1 and P.W.2 and they deposed that the negligence exist on the part of the driver of the bus. The driver of the bus was not examined. Ex.P.1/F.I.R was registered against the driver of the bus. Further more, the Tribunal observed that if the respondent bus had proceeded with a reasonable speed, when the vehicle going in front of them was suddenly stopped due to some reasons, the respondent driver also must have been in a position to stop his vehicle immediately. It can be done only if the driver of the bus had control over the bus. But, in the instant case even though the motor cyclist stopped his vehicle, the driver was not able to control his vehicle and dashed against the two wheeler. Hence the Tribunal arrived at a conclusion that the negligent driving of the driver of the bus alone was the cause for the accident. To controvert the same, no new fact is forthcoming on the side of the respondent. Hence, there is no infirmity or illegality in the order passed by the Tribunal on the part of the negligence and the same is confirmed is as such.

10. With regard to quantum in M.C.O.P.No.5110 of 2002, the Tribunal based on the avocation of the first appellant fixed Rs.3,000/- as his monthly income and awarded the same towards the head loss of income. Based on Ex.P.2/Discharge summary, the Tribunal has awarded Rs.1,000/- and Rs.2,000/- towards Transportation and Extra Nourishment. Considering Exs.P.3 and 4/Medical Bills Rs.10,000/- and Rs.5,000/- was awarded under the head Medical Bills and pain and sufferings respectively. Considering the nature of injuries sustained by the first appellant and also taking note of his avocation Rs.5,000/- is awarded under the head simple injuries. Thus, in total Rs.26,000/- was awarded as compensation for the first appellant in M.C.O.P.No.5110 of 2002.

11. This Court on re-appreciating the evidences available on record ascertained the disability of the first appellant as 30% and determined Rs.1,000/- per percentage and awarded Rs.30,000/- under the head disability. The amounts awarded under the heads Transportation, Extra Nourishment, and pain and suffering are enhanced to Rs.2,500, Rs.5,000/-, and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards Damage to clothes, Attender charges hence Rs.500/- and Rs.5,000/- is awarded towards the same heads respectively. Thus, the amount awarded by this Court is as follows:

Particulars	Amount awarded in M.C.O.P.No.5110/2012	Amount awarded by this Court
Transportation	Rs.1,000/-	Rs.2,500/-
Extra Nourishment	Rs.2,000/-	Rs.5,000/-
Medical Bills	Rs.10,000/-	Rs.10,000/-
Pain and sufferings	Rs.5,000/-	Rs.10,000/-
Injuries	Rs.5,000/-	Rs.6,000/-
Loss of earning	Rs.3,000/-	Rs.3,000/-
Damage to clothes	-Nil-	Rs.500/-
Permanent Disability	-Nil-	Rs.30,000/-
Attender Charges	-Nil-	Rs.5,000/-
Total	Rs.26,000/-	Rs.72,000/-

12. With regard to quantum in M.C.O.P.No.5112 of 2002, the Tribunal based on the avocation of the second appellant fixed his monthly income as Rs.3,000/-. Based on ExP.7/Medical Bills, the Tribunal has awarded Rs.1,000/- and Rs.2,000/- towards Transportation and Extra Nourishment. Considering Exs.P.9/CT scan report Rs.20,000/- and Rs.5,000/- was awarded under the head Medical Bills and pain and sufferings respectively. Considering the nature of injuries sustained by the second appellant and also taking note of his avocation Rs.4,000/- and Rs.10,000/- was awarded under the head of loss of earning power and injuries. Thus, in total Rs.32,000/- was awarded as compensation for the first appellant in M.C.O.P.No.5112 of 2002. (This Court observed that the Tribunal has inadvertently arrived the total amount as Rs.42,000/- and the same is corrected).

13. This Court on re-appreciating the evidences available on record observed that the second appellant was not admitted in any hospital and he has also not produced any other document to prove the admission either in Government Hospital or private hospital. Even the disability certificate issued by the Doctor cannot be acceptable as he is neither the Neuro surgeon nor a doctor competent to certify about the head injury. Hence, the Tribunal held that no amount can be granted towards disability and this Court is inclined to accept the same. The amounts awarded under the heads Transportation, Extra Nourishment, Medical bills, loss of earning power and pain and suffering are enhanced to Rs.2,500, Rs.5,000/-, Rs.20,000/- Rs.10,000/- and Rs.10,000/- respectively. Thus, the amount awarded by this Court is as follows:

Particulars	Amount awarded in M.C.O.P.No.5112/2012	Amount awarded by this Court
Transportation	Rs.1,000/-	Rs.2,500/-
Extra Nourishment	Rs.2,000/-	Rs.5,000/-
Medical Bills	Rs.10,000/-	Rs.20,000/-
Pain and sufferings	Rs.5,000/-	Rs.10,000/-
Loss of earning power	Rs.4,000/-	Rs.10,000/-
Injuries	Rs.10,000/-	Rs.15,000/-
Damage to clothes	-Nil-	Rs.500/-
Attender Charges	-Nil-	Rs.5,000/-
Total	Rs.32,000/-	Rs.68,000/-

Therefore, in C.M.A.No.147 of 2012 the award amount is enhanced to Rs.72,000/- from Rs.26,000/-. In C.M.A.No.148 of 2012 the award amount is enhanced to Rs.68,000/- from Rs.32,000/-

14. In the result, these Civil Miscellaneous Appeal are partly allowed. The respondent-Transport Corporation is directed to deposit the amount awarded by this Court with interest at 9% p.a from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellants are permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn, by making proper application before the Tribunal. No costs.

Sd/-
सतयजोयचर्यो
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District Sessions Judge,
Fast Track Court No.III,
City Civil Court, Chennai.

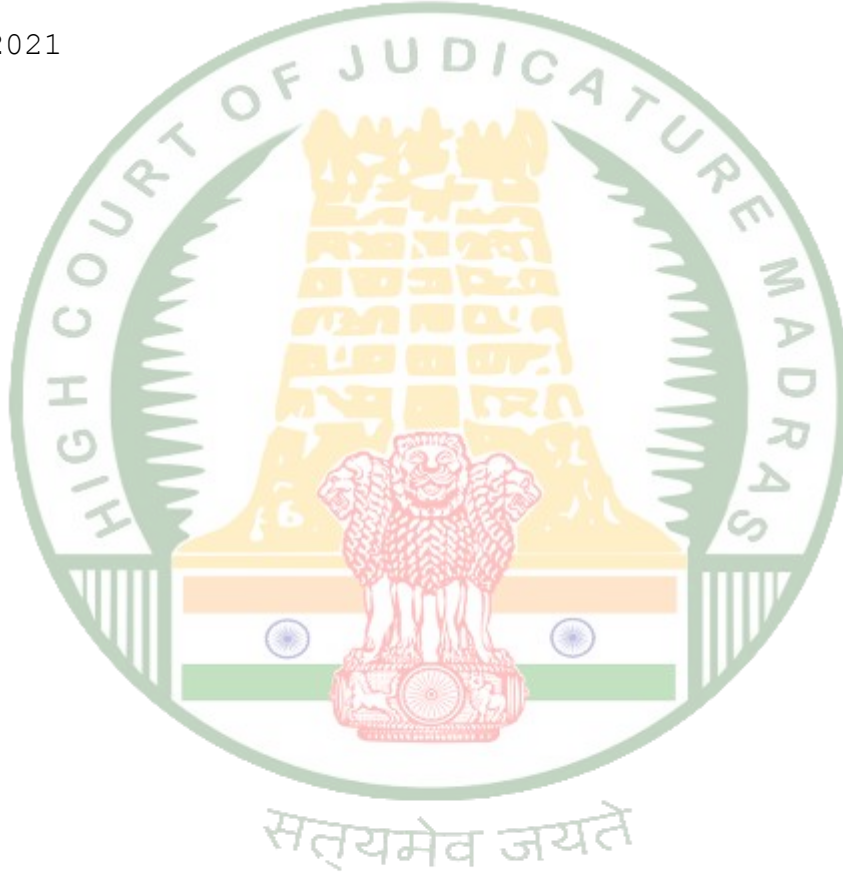
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The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.K.Kathiresan, Advocate, S.R.No.14917
+1cc to Mr.K.Kathiresan, Advocate, S.R.No.14918
+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.15094

C.M.A.Nos.147 and 148 of 2012

VSNII(CO)
CS/19/03/2021



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