

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2050 of 2012
and
C.M.P.No.15438 of 2018

N.Ajith Kumar

... Appellant

Vs.

1. A.Zubair Ahmed
 2. The New India Assurance Co. Ltd.,
No.45/146, Moore Street,
Chennai - 1.
 3. The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division - II, Vellore.
- ... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 24.11.2011 made in M.C.O.P.No.386 of 2004 on the file of the IV Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj

For R2 : Mr.M.Krishnamoorthy

For R3 : Mr.S.V.Vasantha Kumar

R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 24.11.2011 made in M.C.O.P.No.386 of 2004 on the file of the IV Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2. The case of the appellant is that on 06.05.2003 at about 3.00 p.m., while the appellant was traveling as passenger in the

third respondent's bus bearing Registration No.TN-27-N-0888, a Lorry bearing Registration No.KA-O-01-8269 which was driven by its driver in a rash and negligent manner dashed against the bus. Due to the impact, the appellant had sustained grievous injuries, hence he was admitted in the Government Hospital at Vellore for treatment. Subsequently, he was shifted to Sri Ramachandra Medical Centre, there he took treatment from 07.05.2003 to 28.05.2003. At the time of accident, he was aged 36, and before the accident, he was working as a Senior Technician and was earning Rs.9,900/- to Rs.15,600/- per month. Due to the accident, he became permanently disabled, hence he filed a petition before the IV Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai, claiming Rs.30,00,000/- as compensation from the first and second respondents as they are the owner and insurer of the Lorry involved in the accident.

3. Denying the allegations, the second respondent insurance company filed a counter affidavit stating that the accident was caused only by the driver of the third respondent and not by the driver of the first respondent. Further, it has been stated that the first respondent's driver had no valid driving licence, permit and fitness certificate at the time of accident and the appellant has to strictly prove that the driver of the first respondent had possessed the said documents at the time of accident. Moreover, it has been stated that the alleged age, income, occupation and disability are not true and the amount of compensation claimed is highly excessive.

4. The third respondent also filed a counter affidavit denying the allegations stating that the accident was caused only by the rash and negligent driving of the first respondent's driver and they are not responsible for the alleged accident. Further, it has been stated that the appellant had not at all travelled in the accident bus, and if he would travelled in the bus, he has to prove by producing documentary evidence such as the Bus ticket and the Hospital Accident Register. Moreover, it has been stated that the alleged age, occupation, monthly income, nature of injuries and disability are not true and the amount of compensation claimed is more excessive and exorbitant.

5. During the trial, on the side of the appellant, the appellant himself was examined as PW1 and has marked certain documents as Exs.P1 to P26, and two doctors, namely, Saichandran and Thiagarajan were examined as PW2 and PW3. On the side of the respondents, one Mr.Deenadayalan, Conductor of TNSTC Bus, was examined as RW1, one Mr.Banugoban, Driver of the TNSTS Bus, was examined as RW2, one Dr.M.Ganapathy was examined as RW3 and Exs.R1 to R6 were marked.

6. The Learned Motor Accidents Claims Tribunal, Small Causes Court, Chennai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded Rs.21,38,600/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Income	90,000
2.	Transport to Hospital	25,000
3.	Extra Nourishment	50,000
4.	Medical Expenses	1,45,600
5.	Pain and Sufferings	1,00,000
6.	Permanent Disability	17,28,000
	Total	21,38,600

7. Aggrieved by the said award, the appellant/claimant has filed this appeal before this Court seeking for enhancement of the same.

8. Heard the learned counsel for the appellant and the learned counsel for the respondents 2 & 3, and perused the materials available on record.

9. On perusal of the award dated 24.11.2011 passed by the Learned Motor Accidents Claims Tribunal, Small Causes Court, Chennai, it is observed that the appellant in order to prove that the first respondent's driver was the cause for the alleged accident marked FIR copy as Ex.P1, but the Tribunal after perusing the entire materials on record has found that the accident was caused by both the lorry and bus drivers, and therefore, the Tribunal has fixed the negligence on both the drivers equally. Further, the Tribunal has found that the first respondent's lorry was insured under the second respondent at the time of accident, and therefore, the Tribunal has held that the second respondent is liable to pay 50% of the compensation on behalf of the first respondent and the remaining 50% would be paid by the third respondent.

10. It is also observed from the award of the Tribunal that the appellant in order to prove his avocation has marked his salary slip as Ex.P11, and the Tribunal only after perusing the same has fixed his income as Rs.15,000/- per month. Further, it is observed that the appellant has marked his Leave Certificate as Ex.P14, and on perusal of the same, the Tribunal has found

that the appellant was on medical leave and had taken treatment for nearly six months, and therefore, has awarded Rs.90,000/- i.e. Rs.15,000/- per month, towards Loss of Income. Moreover, it is observed that the appellant has marked his medical bills and hospital bills as Exs.P8 & P9, and on perusal of the same, the Tribunal has found that the appellant had spent nearly Rs.1,50,000/- for Medical Expenses, and therefore, has awarded an exorbitant amount i.e. Rs.1,45,600/- towards the said head.

11. It is further observed from the award of the Tribunal that the appellant in order to prove his disability examined two doctors, namely, Dr.Saichandran and Dr.Thiagarajan as PW2 and PW3. The Dr.Saichandran has stated in his deposition that due to the accident, the appellant's right thigh bones had been fractured and hence a plate was fixed and a surgery was made to him. But, in spite of the surgery, his bones were not joined and he troubled to sit, stand and walk for long time, and therefore, he assessed 65% permanent disability. The Dr.Thiagarajan has stated in his deposition that the appellant's forehead bone had been fractured, and due to which, he suffered from headache, dizziness and tremors, and therefore, he assessed 30% disability. Though the doctors have assessed 95% disability, the Tribunal after perusing the disability certificates marked by PW2 and PW3 has found that the appellant has sustained only 60% disability, and therefore, has awarded Rs.17,28,000/- (15000 x 12 x 16 x 60%) towards the said head. Moreover, it is observed that the Tribunal only considering the nature of injuries sustained by the appellant has awarded Rs.50,000/- for Extra Nourishment and Rs.1,00,000/- for Pain & Sufferings, and further, during the period of treatment, the appellant definitely would have incurred expenses for Transport, and the Tribunal only considering the same has awarded Rs.25,000/- towards the said head. The entire medical records were scrutinized by this Court and found that the disability suffered by the appellant to the extent of 60% is proved.

12. In view of the above observations made by this Court, this Court do not find any error in awarding the compensation at Rs.21,38,600/- by the Court below and therefore, not inclined to interfere with the same.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

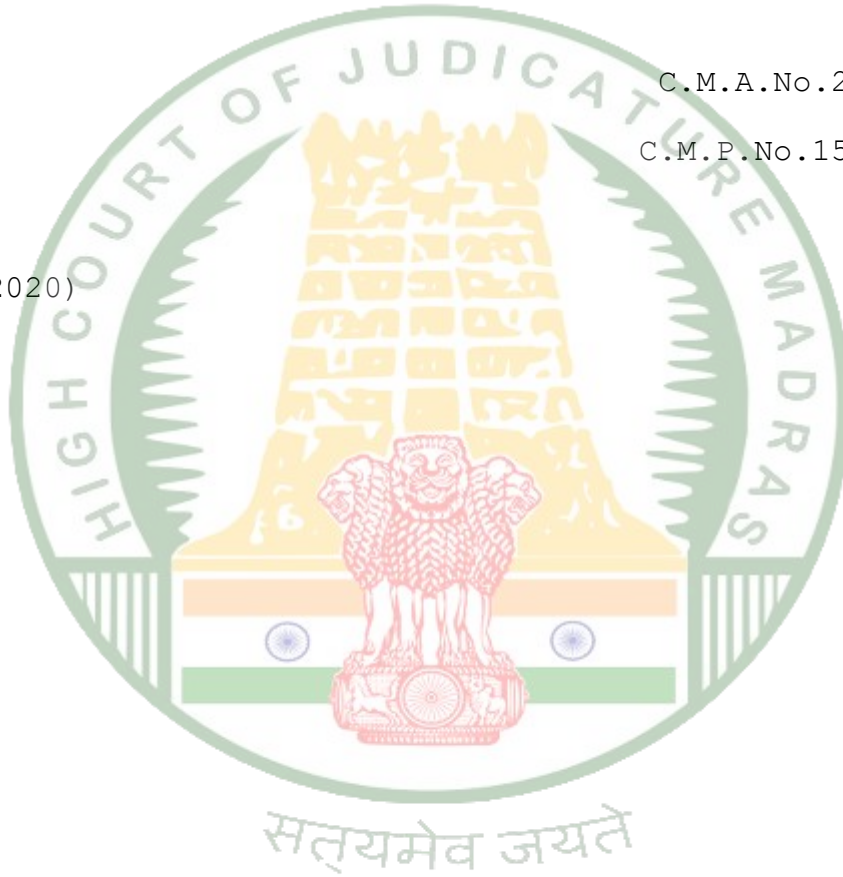
1. The Learned IV Judge,
Small Causes Court (Motor Accidents Claims Tribunal),
Chennai.

2.The Section Officer, VR Section, High Court, Madras.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 4463(07/10/2020)

C.M.A.No.2050 of 2012
and
C.M.P.No.15438 of 2018

BP(CO)
SP(13/08/2020)



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