



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.10.2020	Pronounced on: 08.10.2020
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Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.2192 of 2015

S.Murugan,
S/o.Subramaniam,
D.No.1/36, Kosi Mani Street,
Choolaimedu,
Chennai - 600 094.

... Appellant/Claimant

/versus/

The Managing Director,
Metropolitan Transport Corporation Chennai Ltd,
Pallavan Salai,
Chennai - 600 002.

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 27.11.2013 made in M.A.C.T.O.P.No.4715 of 2011 on the file of the Motor Accident Claims Tribunal and IV Court of Small Causes, Chennai.

For Appellant : Mrs.M.Malar
For Respondent : Dr.S.S.Swaminathan

JUDGMENT

(The case has been heard through video conference)

This Appeal is filed by the claimant for enhancement of compensation being not satisfied with the award of the Tribunal, compensating the claimant with a sum of Rs.1,81,327/- for the injury sustained by him in the road accident occurred on 14.01.2011.

2. The appellant while riding his motorcycle bearing registration No.TN-10-AB-5346 near Vaavin signal (junction) Ambattur Industrial Estate, the MTC bus bearing registration No.TN-01-N-7636, hit the motorcycle and caused the accident. The claimant sustained grievous injury. He was admitted in the New Hope Indian Speciality Hospital at Arumbakkam, Poonamallee High Road. He was treated for the fractured injury by surgery. Hence, a claim petition seeking compensation of Rs.6,00,000/- was filed against the Managing Director, MTC, which owns the offending bus.

3. The Corporation/respondent has filed counter, alleging the negligence on the part of the claimant. The claimant, recklessly crossed Centre Median Line and proceeded in the opposite direction, contrary to road rules, has caused the accident. The owner of the motorcycle and the insurance company of the motorcycle were not arrayed as parties. Hence, the petition is bad for non-joinder of necessary parties.

4. Regarding the quantum of compensation claimed, the respondent has disputed his earning as well as expenditure over the medical treatment.

5. The Tribunal, after considering the rival submissions and the evidence let in by the parties, has awarded a sum of Rs.1,81,327/- under the following heads.

Loss of earning	Rs.20,000/-
Transport to Hospital	Rs.10,000/-
Extra Nourishment	Rs.5,000/-
Medical Expenses	Rs.41,327/-
Pain and sufferings	Rs.25,000/-
Disability of 40% at Rs.2,000/- per percentage	Rs.80,000/-
Total	Rs.1,81,327/-

6. This Appeal is filed by the claimant on the ground that the injury sustained by him in the accident has impaired his earning capacity, causing 50% permanent functional disability. Hence, the Tribunal ought to have applied the multiplier and should have awarded adequate compensation. Under other non-conventional heads, the appellant has stated that the award is not fair and adequate.

7. The Learned Counsel appearing for the respondent/corporation would submit that the discharge summary of the appellant indicates that he sustained compound fracture at 1st metatarsal base right foot grade III-A, segmental fracture right tibia with comminution. He was treated as inpatient from 04.01.2011 to 11.01.2011. He has undergone surgery for the fracture. The injured has paid around Rs.41,327.50 towards medical bill and the balance medical expenses was reimbursed by the State Government under the Chief Minister's Insurance Scheme. Therefore, the Tribunal has rightly awarded a sum of Rs.1,81,327/-, after considering the loss of earning during the treatment period, pain and sufferings and disability. Therefore, there is no need to interfere the award of the Tribunal.

8. Heard the rival submissions of the Learned Counsel

for the appellant and the Learned Counsel for the respondent. Records perused.

9. The compound fracture at 1st metatarsal base right foot grade III-A, segmental fracture right tibia with comminution are not scheduled injuries. Therefore, the plea of the appellant that the multiplier ought to have been applied is unsustainable. P.W.3, the Doctor who has examined the injured, after two years of accident, had assessed the disability as 50%. This is in respect of one limb i.e., right foot, which has suffered compound fracture 1st metatarsal base right foot grade III-A, segmental fracture right tibia with comminution got reunion and fixed with K-wire and fracture of 1st metatarsal bone of the right foot fixed with long nail and screws. It appears that the said disability is in respect of limb and not whole body. However, the Tribunal has fixed the partial permanent disability at 40% and has awarded Rs.80,000/- as compensation. The claimant has deposed that, he was earning Rs.10,000/- per month as CNC Operator. Though, there is no evidence to substantiate this claim, the Tribunal has accepted the same and awarded a sum of Rs.20,000/- towards loss of earning during the treatment period.

10. The overall consideration of the evidence and the award, this Court finds that the Tribunal has properly appreciated the evidence arriving at the quantum of compensation except disallowing the expenses for future treatment to remove the nail and screws fixed. We find that, one Dr.Velmurugan, New Hope Hospital has a given letter dated 12.07.2013, which is marked as Ex.P.6 informing that, for implant removal on right leg, a sum of Rs.40,000/- may required for the procedure.

11. As pointed out earlier, the claimant is covered under the medical Insurance and it is not sure that whether he need to spend Rs.40,000/- from his pocket for implant removal. In any event, for the future medical expense, he must be compensated fairly. Hence, this Court finds that a sum of Rs.20,000/- will be fair and adequate for the said future expense. To that extent, the award of the Tribunal is modified. The compensation of Rs.1,81,327/- awarded by the Tribunal is enhanced to Rs.2,01,327/-.

12. Therefore, this Court holds that the appellant is entitled for a sum of Rs.2,01,327/- with 7.5% interest from the date of numbering (17.11.2011) the petition till the date of realization. The Transport Corporation shall deposit the award amount with interest within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdrawn the same on filing proper application.

13. Accordingly, the Civil Miscellaneous Appeal is partly-allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To,

1.The Motor Accident Claims Tribunal and
The IV Judge,
Court of Small Causes,
Chennai.

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

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No. 33236

+1cc to Mr.M.Malar, Advocate, S.R.No. 33254

C.M.A.No.2192 of 2015

RSV(CO)
GN(09/07/2021)