

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2314 OF 2012

M.Vadivelu

... Appellant/Petitioner

Vs.

The Managing Director,
Andhra Pradesh State Transport Corporation Ltd.,
Murshidabad, Hyderabad,
Andhra Pradesh.

... Respondent/Respondent

Prayer:-

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 03.04.2012 made in M.C.O.P.No.308 of 2010 on the file of Additional District Judge (Motor Accidents Claims Tribunal), Fast Track Court No.I, Poonamallee.

For Appellant : Mr.P.Natarajan

For Respondent : Mrs.G.V.Shoba

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 03.04.2012 made in M.C.O.P.No.308 of 2010 on the file of Additional District Judge (Motor Accidents Claims Tribunal), Fast Track Court No.I, Poonamallee.

2. The appellant is the claimant in M.C.O.P.No.308 of 2010 on the file of Additional District Judge (Motor Accidents Claims Tribunal), Fast Track Court No.I, Poonamallee. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.03.2009.

3. The case of the appellant is that on 02.03.2009 at about 15.00 hours, when the appellant was riding a motorcycle bearing Registration No.TN-23-AR-1185 in Arakkonam - Kancheepuram High Road and while passing near Issac Teachers Training School at Manjambadi Village, the respondent's vehicle

A.P.S.R.T.C. Bus bearing Registration No.AP-28-Z-2245, which came in the opposite direction towards Arakkonam in a rash and negligent manner dashed against the appellant, thereby the appellant sustained grievous injuries. In spite of treatment, the appellant becomes permanently disabled and not able to stand, walk and do work as earlier. Hence the appellant filed a petition before the Additional District Judge (Motor Accidents Claims Tribunal), Fast Track Court No.I, Poonamallee claiming a sum of Rs.5,00,000/- as compensation from the respondents.

4. Denying the allegations, the respondent has filed a counter affidavit stating that the accident had occurred only due to the rash and negligence riding of the appellant. Moreover, the age, occupation, income, period of treatment and disability of the appellant are denied and the amount of compensation claimed is highly excessive.

5. During the trial before the Tribunal, on the side of the appellant, the appellant himself was examined as PW1 and marked certain documents as Exs.P1 to P4 and one Dr.Saichandran was examined as PW2. Neither oral evidence let in nor documents marked on the side of the respondent.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving of the respondent's driver and directed the respondent to pay a sum of Rs.1,13,800/- as compensation to the appellant herein. Not being satisfied with the amount awarded by the Tribunal, the appellant herein has come out with the present appeal seeking enhancement of compensation.

7. Heard Mr.P.Natarajan, learned counsel appearing for the appellant and Mrs.G.V.Shoba, learned counsel appearing for the respondent.

8. On perusal of the award dated 03.04.2012 passed by the tribunal, it is observed that the Tribunal has taken into consideration that no supportive evidence has been filed by the claimant for his income and due to Grade II compound fracture both bones on right leg, the Tribunal has awarded a sum of Rs.5,000/- under the head Loss of Income. As there is no supportive evidence for his income, considering the nature of fracture sustained by the claimant, the amount awarded by the Tribunal under the head Loss of Income is enhanced to Rs.9,000/- and also the amount towards pain and sufferings is enhanced to Rs.10,000/-. The Tribunal has rightly awarded a sum of Rs.5,000/- and Rs.5000/- towards Transport to Hospital and Extra Nourishment. The same are hereby confirmed. Moreover, it is observed that the appellant had marked Ex.P3 to prove the

expenses made for the treatment and only after considering the same, the Tribunal has awarded a sum of Rs.63,800/- towards Medical Expenses and the same is hereby confirmed. The Tribunal has not awarded any amount towards Attender Charges. A sum of Rs.3,000/- is granted towards Attender Charges. From the materials on record, it is seen that PW2/Doctor assessed that the appellant suffered 40% disability. Considering the nature of injury sustained by the appellant, the Tribunal has fixed the disability as 30% and has not awarded any amount under the said head. As per the settled principal of law and the various decisions of this Court and also considering the age and nature of injuries sustained by the appellant/claimant, this Court is inclined to fix the disability as 35% and grant a sum of Rs.3,000/- per percentage of disability. If that yardstick is adopted, a sum of Rs.1,05,000/- (35 x 3,000) has to be awarded and it is awarded accordingly. Consequently, the amount towards Loss of future amenities for disability is hereby reduced to Rs.2,000/-.

9. In view of the above observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Income	5,000/-	9,000/-
2.	Medical expenses	63,800/-	63,800/-
3.	Transport to Hospital	5,000/-	5,000/-
4.	Extra nourishment	5,000/-	5,000/-
5.	Attender Charges	0	3,000/-
6.	Pain and suffering	5,000/-	10,000/-
7.	Loss of future amenities for his disability	30,000/-	2,000/-
8.	Disability	0	1,05,000/-
	Total	Rs.1,13,800/-	Rs.2,02,800/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,13,800/- is hereby enhanced to Rs.2,02,800/- together along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced

compensation. The respondent is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge
(Motor Accidents Claims Tribunal),
Fast Track Court No.I, Poonamallee.
2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.P.Natarajan, Advocate, S.R.No.8408

+1cc to Mrs.G.V.Shoba, Advocate, S.R.No.8326

C.M.A.No.2314 of 2012

KJ(CO)
CS/25/01/2021

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