

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2411 OF 2012

S.Viswalingam

...Appellant

Vs

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai-2

.... Respondents

PRAYER:

Civil Miscellaneous Appeal filed to filed against the fair and decreetal order passed in M.C.O.P.No.3530 of 2002 dated 23.01.2007 passed by the V Small Causes Judge, Chennai, Motor Accident Claims Tribunal.

For appellant : Mr.S.Parthasarathy

For Respondent : Mr.S.Sivakumar

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded in M.C.O.P.No.3530 of 2002 dated 23.01.2007 passed by the V Small Causes Judge, Chennai, Motor Accident Claims Tribunal.

2. It is the case of the appellant that on 17.03.2000 at about 8:10 a.m when the appellant was proceeding from his House to Ashok Nagar Shop in his motorcycle Registration No. TN-02-Z-2725 and when he was going near West Mambalam Reddy Kupam Road, a MTC bus bearing Registration No.TN01-N-3174 came from opposite direction in a rash and negligent manner and hit the motor cycle. As a result of which the appellant sustained multiple grievous injuries. The accident occurred due to the negligent driving on the part of the driver of the bus. Hence, he filed a claim petition before the Tribunal against the respondent/Transport Corporation seeking Rs.4,00,000/- as compensation.

3. The Tribunal Considering the materials available on record awarded a sum of Rs.1,39,303/- as compensation with interest at 7.5% 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 appellant has come forward with this appeal before this Court.

5. In order to prove the claim before the Tribunal, on the side of the appellant four witnesses were examined viz., P.W.1 to P.W.4 and 11 documents viz., Ex.P1 to Ex.P11 were marked. On the side of the respondent one witness was examined viz., R.W.1 and two documents were marked viz., R.W.1 and R.W.2.

6. Before the Tribunal, the appellant has filed a claim petition, wherein it has been stated that the appellant sustained fracture on his right leg and right hand and multiple injuries all over the body and subsequently right leg amputated. With regard to avocation he is a Rice Merchant and earning Rs.8,500/- 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.4,00,000/- as compensation under several heads.

7. The respondent/Insurance Company 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 great speed to overtake an auto and a waterlorry in a reckless manner and hit from right side bumper of the bus and fell down and sustained injury. In any event the claim of the injured/appellant is exorbitant.

8. On a perusal of the order passed the Tribunal, the negligence aspect was discussed elaborately. The Appellant was examined as P.W.1 and he had deposed that when he was proceeding in his two wheeler near West Mambalam Reddy Kuppam Road, the respondent bus bearing Registration No.TN01-N-3174 came from opposite direction in a rash and negligent manner and knocked him. As a result of which the appellant sustained multiple grievous injuries. P.W.4/Parivallal who is having a tea shop in Reddykuppam street submitted that the driver of the bus is the cause for the accident..

9. To controvert the same, R.W.1 /driver of the bus stated that the claimant was riding his motor cycle at a great speed to overtake an auto and a water lorry came in a rash manner, lost his control over the vehicle and fell down and he is not

responsible for the accident. Ex.P.1/F.I.R corroborates with the deposition of R.W.1.

10. Eventhough P.W.4 supports the case of the claimant, on a careful reading of his evidence it shows that he did not note the number of the bus which involved in the accident. Be it stated, that the evidence of P.W.4 cannot be relied completely. Hence it is clear that the claimant had contributed to the accident to a great extent, the enormity of the damage could have been avoided if R.W.1 had driven the bus with a little more care and caution. In any event the appellant had sustained extensive injuries in his right leg and the same had to be amputated at right thigh. If R.W.1 had stopped the bus on seeing the falling down of the appellant, the bus would not have run over the appellant's right leg. The fact remains that the bus had run over the appellant's right leg resulting in extensive injuries which shows that R.W.1 was also driving the bus in a rash and negligent manner. Hence, based on the above witness and evidence the Tribunal arrived at a conclusion that negligent exists on the part of the appellant at 75% and 25% on the part of the driver.

11. This Court on re-appreciating the evidences available on record held that the negligent exists on the part of the appellant at 70% and 30% on the part of the driver.

12. With regard to quantum, considering the avocation of the injured the Tribunal has awarded Rs.20,000/- towards loss of earning. Consider Ex.P.5/Medical bills the Tribunal has awarded Rs.61,325/- and Rs.25,000/- towards medical expenses and pain and sufferings. Apart from this the Tribunal has awarded Rs.5,000/-, Rs.10,000/- and Rs.2,000/- towards Transportation, Extra nourishment and damage to clothing respectively. P.W.2/Doctor assessed the disability at 85% but, considering the injuries sustained by the appellant the disability is fixed at 70% and taking note of the age of the appellant, the relevant factor as per schedule IV of the workmen's compensation Act is Rs. 221.37 and arrived at Rs.4,33,855/- (Rs.4,000 x 70/100 x 221.37 x 70/100) under the head 'disability'. Thus, the total compensation is quantified to Rs.5,57,210/-

13. In view of the above, this Court is inclined to fix the negligence aspect on the side of the appellant at 70% and 30% on the side of the respondent/Transport Corporation. Hence, the appellant is entitled for 30% of the compensation which comes to around at Rs.1,67,163/-.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. The respondent-Transport Corporation is directed to deposit Rs.1,67,163/- with interest at 7.5% 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 appellant is permitted to withdraw the modified award amount, less the amount if any, already withdrawn, by making proper application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

smn

To

The Motor Accidents Claims Tribunal,
V Court of Small Causes, Chennai.

Copy To

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

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.11769
+1cc to Mr.S.Sivakumar, Advocate, S.R.No.12552

C.M.A.No.2411 of 2012

SVI(CO)
CS/18/11/2020

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