

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2673 of 2015

T.B.Jayaprakash

... Appellant/Petitioner

/versus/

The Manager

Metropolitan Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai - 2.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow the Civil Miscellaneous Appeal against the award and decree dated 26.12.2007 made in M.C.O.P.No. 793 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, FTC-IV, Poonamallee.

For Appellant : Mr.K.Varadhakamaraj

For Respondent : Mr.Suresh Srinivasan

JUDGMENT

(The case has been heard through video conference)

Heard the learned counsel for the appellant and the respondent.

2.It is seen from the records that the claimant was working as an Assistant Manager in United India Insurance Co. Ltd. at the time of accident. When he tried to board the respondent Corporation bus at Pondi bazar bus stand, the conductor of the bus gave whistle without ensuring whether all the passengers have entered into the bus and the driver of the bus started the bus at high speed due to which the claimant fell down and sustained injuries.

3.The claim petition was filed against the Corporation, seeking compensation of Rs.15,00,000/-. The Tribunal, after considering the fact that the claimant got into the running bus

and had met with an accident and taking note of the medical leave and the salary certificates which reflects that due to the injuries, the claimant has not got any loss of income or any loss of earning capacity, has awarded a sum of Rs.81,000/- in total after deducting 25% for the contributory negligence. Aggrieved by the said order, the present appeal has been filed, seeking enhancement.

4.The learned counsel for the appellant would submit that the bus driver without confirming that all the passengers have boarded the bus, has started the bus at high speed and therefore, there was no fault on the part of the claimant. He further submitted that the Tribunal failed to take note of the fact that the claimant was admitted in the Hospital as inpatient, for the injuries sustained, for 38 days and thereafter, he was undergoing physiotherapy. Further, he submitted that adequate compensation have not been given for loss of amenities and attender charges. The learned counsel for the appellant would also submit that fixing disability at 65% and awarding a sum of Rs.55,000/- towards disability, is not a just compensation.

5.However, the learned counsel appearing for the Transport Corporation would submit that the award passed by the Tribunal is just. Since the accident was caused by the claimant himself and his entire Medical Expenses has been taken care of, by his employer, there was no loss of income or any other expenditure towards his treatment. Therefore, he prayed for dismissal of the appeal.

6.On considering the rival submissions and perusal of the records, this Court finds that the reduction of 25% towards contributory negligence is justifiable, since, admittedly, the claimant met with an accident while trying to board into the moving vehicle. However, when the doctor has assessed disability at 65% for the fracture sustained, the Tribunal has not adequately compensated for the partial permanent disability and also for the loss of amenities. Hence, this Court would like to modify the award of the tribunal as below:

Pain and Sufferings	-	Rs.21,000/
Medical expenses and Attender charges	-	Rs.12,000/
Mental agony	-	Rs.20,000/
Disability	-	Rs.90,000/

Pain and Sufferings	-	Rs.21,000/-
Loss of amenities	-	Rs.15,000/-
Transport		Rs.1,000/-
Extra Nourishment		Rs.1,000/-
Total		Rs.1,60,000/-
Less 25% contributory negligence		Rs.1,20,000/-

7. This Civil Miscellaneous Appeal is partly allowed and the compensation modified by this court has to be paid with interest 7.5% from the date of realisation. The respondent Corporation is directed to deposit the said compensation within a period of twelve weeks from the date of receipt of a copy of this order and on such deposit, the claimant is permitted to withdraw the same after completing proper formalities. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kmm

To

1.The Additional District & Sessions Judge,
Motor Accidents Claims Tribunal,
FTC-IV, Poonamallee.

Copy to:

The Section officer,
VR Section, High Court,
Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate SR.33541

+1cc to Mr.K.Moorthy, Advocate SR.33475

C.M.A.No.2673 of 2015

KK(CO)
CB(30/04/2021)