

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.3116 of 2012

K.T. Philomina

...Appellant/Petitioner

Vs

Managing Director,

Metropolitan Transport corporation Ltd.,

Anna Salai, Chennai-2.

... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed against the Decree and Judgment dated 16.02.2010 made in M.C.O.P.No.5801 of 2005 on the file of the Motor Accident Claims Tribunal (III Court of small Causes), Chennai.

For appellant : Mr.K. Vardhakamaraj

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.5801 of 2005 on the file of Motor Accident Claims Tribunal, III Court of small Causes, Chennai.

2.It is the case of the appellant that on 21.06.2005 at about 1.45 p.m when the appellant was entering into the bus bearing Registration No.TN-01-N-3261 belonging to the respondent at T.Nagar bus stand, at that time, the bus driver without noticing the appellant stepped into the bus, started the bus in a very rash and negligent manner and dashed against the another bus bearing Registration No.TN-01-N-2662 which was stationed at the bus stop. Due to the impact, the appellant sustained grievous injuries and treated in Apollo Hospital, Chennai. The accident occurred due to the rash and negligent driving of the driver of the bus. Hence, he filed a claim petition before the Tribunal claiming Rs.4,00,000/- as compensation.

3.The Tribunal Considering the materials available on record awarded a sum of Rs.1,96,900/- 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 two witnesses were examined viz., P.W.1 and P.W.2 and 15 documents viz., Ex.P1 to Ex.P15 were marked. On the side of the respondent one witness was examined viz., R.W.1 and no documents were marked.

6. Before the Tribunal, the appellant has filed a claim petition, wherein it has been stated that the appellant sustained Traumatic contusion left lung with flail chest and multiple injuries all over the body. Due to the injuries sustained in the accident, he was not able to continue his job as before. Hence, he prayed to award 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 appellant. It was also stated in the said counter that the claimant while trying to board into the running bus got strucked in the bus, which was stationed in the bus stop. Hence, the accident occurred due to the negligence on the part of the appellant/claimant.

8. On a perusal of the order passed the Tribunal, the negligence aspect was discussed elaborately. Whether the accident had happened due to the rash and negligent driving of the driver of the MTC bus bearing Registration No.TN-01-N-3261? The Appellant was examined as P.W.1 and he had deposed that due to the negligent driving by the driver of the respondent bus is the cause for the accident. On the side of the respondent one Mr.Gopal was examined as R.W.1 and he deposed that when he was slowly moving the bus, suddenly the passengers in the bus stop were shouted, after hearing sound he got down from the bus and on seeing one women aged about 40 years he fell down and when he enquired about with others, they told that the woman tried to board in the moving bus and hit with another bus which was stationed in the bus stop. The evidence given by R.W.1 is not an acceptable one, since he is interested witness. No independent witness was examined on the side of the respondent to prove his case. Hence, the Tribunal arrived at a conclusion that due to the rash and negligent driving of the driver of the bus, this accident had occurred. Hence, the findings of the Tribunal with regard to negligence aspect is based on weightage of evidence, probabilities of case and settled principles of law, which cannot be brushed aside easily and does not warrant interference by this Court and the same is confirmed as such.

9. With regard to quantum, considering the avocation of the injured the Tribunal fixed the monthly income of the injured as Rs.4,000/- and due to the accident, she was not able to go for job for atleast 5 months. Hence, the Tribunal has awarded Rs.20,000/- (Rs.4,000 x 5) under this head. Considering the period of treatment Rs.3,000/- each towards the head Transportation and extra nourishment. Taking note of Exs.P1,P3,P4 and P7/Medical bills Rs.1,15,900/- was awarded towards the head medical bills. Considering the nature of injuries sustained by the appellant Rs.20,000/- was awarded towards pain and sufferings. P.W.2/Dr.Saravana Bavanantham assessed the injured and issued Ex.P.14/Disability certificate to the effect that the injured sustained 35% disability. The Tribunal has taken the same without any deviation and determined Rs.1,000/- per percentage and awarded Rs.35,000/- towards the head disability.

10. In view of the above, this Court is inclined to enhance certain heads and they are enhanced accordingly. Considering the period of treatment, the head Transportation and Extra nourishment are enhanced to Rs.5,000/- each from Rs.3,000/-each. Considering the nature of injuries sustained by the appellant the head pain and sufferings is enhanced to Rs.25,000/- from Rs.20,000/-. With regard to disability, this Court is inclined to take 40% as disability and considering the year of accident Rs.1,000/- is fixed per percentage and quantified Rs.40,000/- under the head disability. Considering the avocation of the injured Rs.5,000/- is fixed as monthly income and due to the accident he may not be able to go for job for atleast 6 months. Hence, Rs.30,000/- (Rs.5,000 x 6 months) was quantified under the head loss of earnings. Moreover the Tribunal has not awarded any amount towards the head attendant charges and damage to clothes. Hence, Rs.5,000/- and Rs.1,000/- is awarded towards the same. The amount awarded under the head medical bills remains the same. Thus, the amount awarded by this Court is as follows:

S.No.	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of earnings	Rs.20,000/-	Rs.30,000/-
2	Transport Expenses	Rs.3,000/-	Rs.5,000/-
3	Extra Nourishment	Rs.3,000/-	Rs.5,000/-
4	Medical Expenses	Rs.1,15,900/-	Rs.1,15,900/-
5	Pain and sufferings	Rs.20,000/-	Rs.25,000/-
6	Partial and permanent disability	Rs.35,000/-	Rs.40,000/-
7	Attendant Charges	-Nil-	Rs.5,000/-

S.No.	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
8	Damage to clothes	-Nil-	Rs.1,000/-
	Total	Rs.1,96,900	Rs.2,26,900/-

11.In the result,this Civil Miscellaneous Appeal is partly allowed. The respondent/Transport Corporation is directed to deposit the enhanced amount of Rs.2,26,900/- awarded by this Court along with proportionate costs and interest at the rate of 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

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To

1.The III Judge,
The Motor Accident Claims Tribunal,
III Court of small Causes, Chennai.

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

+1cc to Mr.S.Sivakumar, Advocate, S.R.No. 12554

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No. 12266

C.M.A.No.3116 of 2012

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