

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3168 of 2012
and M.P.No.1 of 2012 and
Cros.Obj.No.3 of 2013

C.M.A.No.3168 of 2012

Block Development Officer,
Rural Panchayat Raj,
Tiruvallur Taluk & District. Appellant/Respondent

Vs.

A.Nandagopal Respondent/Appellant

Cros.Obj.No.3 of 2013

A.Nandagopal Cross objector /Respondent in CMA

Vs.

Block Development Officer,
Rural Panchayat Raj,
Tiruvallur Taluk & District. Respondent/Appellant in CMA

Prayer in C.M.A.No.3168 of 2012 : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to call for the records relating to the Judgment and Decree made in M.C.O.P.No.611 of 2010 dated 20.09.2011 on the file of Motor Accident Claims Tribunal/Fast Track Court-II at Poonamallee and set aside and allow this Appeal.

Prayer in Cros.Obj.No.3 of 2013 : Civil Miscellaneous Appeal is filed under Order XLI Rule 22 of C.P.C, against the Judgment and Decree dated 20.09.2011, made in M.C.O.P.No.611 of 2010 on the file of the Motor Accidents Claims Tribunal (FTC-II) Poonamallee and enhance the compensation from Rs.2,95,866/- to Rs.6,00,000/- to the appellant herein and allow this Cross Appeal.

For Appellant in
C.M.A.No.3168 of 2012
and for Respondent in : Mr.S.Jaganathan
Cros.Obj.No.3 of 2013

For Respondent in
C.M.A.No.3168 of 2012
and for Appellant in : Mr.R.Ramesh for
Cros.Obj.No.3 of 2013 Mr.V.K.Rajagopalan

Judgment

This Civil Miscellaneous Appeal has been filed by the appellant challenging the Judgment and decree order dated 20.09.2011 made in M.C.O.P.No.611 of 2010 on the file of the Motor Accident Claims Tribunal/Fast Track Court -II, Poonamallee not being satisfied by the award passed by the Tribunal, the claimant has filed Cross Objection.

2.The brief facts of the case is that on 04.09.2009 at about 10.30 hrs, when the respondent was travelling as passenger in auto bearing Reg.No.TN-20-I 3115 from Sevvapet towards Pattabiram at avadi to thiruvallur main road, near Sevvaipet Housing board, the appellant's vehicle bearing Reg. No. TN-09-G-2138 which came from opposite direction in a rash and negligent manner endangering to the public safety and dashed against to the respondent's travelling auto thereby caused multiple and grievous injuries to the respondent. The accident had occurred only due to negligence act of the driver of the appellant. The appellant being director of the vehicle, liable to pay compensation to the respondent along with interest. At the time of accident, claimant was aged 39, and before the accident, he was self employed and was earning Rs.9,000/- per month. Due to the injuries sustained in the accident, he became permanently disabled. Hence, he filed a petition before the Court of Subordinate Judge, Poonamallee, claiming Rs.7,00,000/- as compensation from the appellant.

3. Denying the allegations, the appellant / Block Development Officer filed a counter affidavit before the Tribunal stating that the vehicle bearing Registration No.TN-09-G-2138 met with the accident due to the rash and negligent driving of the driver of the respondent and therefore, the appellant is not liable to pay any compensation to the respondent. Further, it has been stated that the alleged age and income of the respondent is not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellant, RW1 was examined and no document was marked. On the side of the respondent, the respondent himself was examined as PW1, one Dr.Saichandran was examined as PW3 and Exs.P1 to P6 were marked.

5. The Tribunal after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the respondent and awarded Rs.2,95,866/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Earnings	10,000
2.	Transport to Hospital	5,000
3.	Extra Nourishment	20,000
4.	Medical Expenses	1,10,866
5.	Pain and Sufferings	30,000
6.	Permanent Disability 60%	1,20,000
	Total	2,95,866

6. Aggrieved by the award, the appellant has filed this appeal before this Court stating that the Tribunal has errored in fixing the compensation for the injuries sustained by the respondent.

7. The respondent has filed a Cross Objection against the award of the Tribunal stating that the Tribunal went wrong in fixing the compensation at Rs.2,95,866/- as against the claim of Rs.7,00,000/-.

8. Heard the learned counsel for the appellant and the learned counsel for the respondent, and perused the materials available on record.

9. On perusal of the award dated 20.09.2011 passed by the learned Subordinate Judge, Poonamallee, it is observed that even though the appellant has denied the liability stating that the accident was occurred only because of the negligence and rashness of the respondent, the Tribunal has come to the conclusion based on Ex.P1, FIR, that the appellant's driver was the cause for the alleged accident. Further, it is observed that since the appellant is the owner of the alleged OMNI LMV Bus, the Tribunal has held that the appellant is liable to compensate the respondent/claimant.

10. As far as quantum of compensation is concerned, it is observed that the respondent had sustained right leg amputation, both legs tibia fracture, both bone of right leg fracture and

right leg skin grafting and multiple injuries all over the body due to the accident, however, the tribunal has awarded only a meager for Loss of disability, as 60%. Hence, this Court taking into account the afore stated injuries suffered by the claimant is inclined to enhance the same. Further, it is observed that the tribunal has awarded a sum of Rs.10,000/- as loss of earning, however the Tribunal has awarded the same as compensation. Considering the nature of injuries definitely, the claimant would not have been able to perform his duties, hence a sum of Rs.15,000/- is awarded towards loss of earning.

11. Considering the nature of injuries sustained by the respondent, it is observed that the Tribunal has awarded only 60% of disability i.e., Rs.1,20,000/-, but the doctor (PW2) has assessed 65% disability and the same needs interference. On perusal of the discharge summary from MIOT hospital, it is clear that the respondent has suffered sever, multiple injuries and fracture. That apart, surgery was done by fixing steel plates and further the discharge summary also reveals that "he underwent intramedullary nailing both tibia, open reduction internal fixation right fibula, Lisfranc's dislocation left foot and debridement right foot". Hence, definitely he would have suffered a lot of pain and sufferings and he would not be in a position to perform his job as he was performing before the accident, hence this Court is inclined to award a sum of Rs.4,50,000/- towards loss of earning. The sum awarded under the other heads i.e. Rs.1,10,866/- for Medical Expenses, Rs.5,000/- for Transport and Rs.20,000/- for Extra Nourishment and Rs.30,000/- for pain and sufferings are reasonable hence the same are unaltered.

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

S.No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or reduced or granted
1.	Loss of Earnings	10,000	15,000	enhanced
2.	Transport to Hospital	5,000	5,000	Confirmed
3.	Extra Nourishment	20,000	20,000	Confirmed
4.	Medical Expenses	1,10,866	1,10,866	Confirmed

S.No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or reduced or granted
5.	Pain and Sufferings	30,000	30,000	Conformed
6.	Permanent Disability 60%	1,20,000	4,50,000	enhanced
7.	Total	2,95,866	6,30,866	Enhanced by 3,35,000

13. In the result, this Civil Miscellaneous Appeal is dismissed and the Cross Objection filed by the respondent is allowed. The compensation awarded by the Tribunal at Rs.2,95,866/- is hereby enhanced to Rs.6,30,866/-. The appellant/Block Development Officer is directed to deposit the said amount with interest at the rate of 6% per annum from the date of petition till the date of realisation, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the respondent/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

rri
To

The learned Subordinate Judge, Fast Track Court NO.II,
Poonamallee.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+lcc to the Government Pleader Sr.14348

C.M.A.No.3168 of 2012
and M.P.No.1 of 2012 and
Cros.Obj.No.3 of 2013

vsn-II[co]
srg 28/04/2021