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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3186 of 2012
and M.P.No.1 of 2012 and
Cros.Obj.No.6 of 2013

C.M.A.No.3186 of 2012:

Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division I,
Kancheepuram.

... Appellant/Respondent/Respondent
in Cross Objection

N.Rajendran

Vs.

... Respondent/Petitioner/
Cross Objector in Cross Objection

Cros.Obj.No.6 of 2013:

N.Rajendran

...Cross objector/Petitioner/
Respondent in C.M.A

Vs.

Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division I,
Kancheepuram.

... Respondent/Respondent/Petitioner in C.M.A

Prayer in C.M.A.No.3186 of 2012 : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decreetal order dated 16.12.2008 made in M.C.O.P.No.3203 of 2004 on the file of the Learned IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

Prayer in Cros.Obj.No.6 of 2013 : Civil Miscellaneous Appeal is filed under Order XLI Rule 22 of C.P.C, against the Judgment and Decree dated 16.12.2008 made in M.C.O.P.No.3203 of 2004 on the file of the Learned IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant in
C.M.A.No.3186 of 2012
and for Respondent in
Cros.Obj.No.6 of 2013

: Mrs.Arachelvi Kavitha



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For Respondent in
C.M.A.No.3186 of 2012
and for Appellant in
Cros.Obj.No.6 of 2013

: Mr.K.Varadha Kamaraj

Judgment

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order dated 16.12.2008 made in M.C.O.P.No.3203 of 2004 on the file of the Learned IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

2. The brief facts of the case is that on 11.03.2004 at about 11.00 p.m., the respondent, namely, N.Rajendran, was traveling in his Van bearing Registration No.TCV-178 from Chennai towards Vellore. When the Van was proceeding near Chinnaiyan Chatram, the appellant's bus bearing Registration No.TN-23-N-1175 was going in front of the Van. Due to bad condition of the bus and unworthy of road condition, suddenly the bus stopped in the middle of the road. As a result, the Van dashed against the bus and the respondent sustained grievous injuries. At the time of accident, he was aged 35, and before the accident, he was self employed and was earning Rs.5,000/- per month. Due to the injuries sustained in the accident, he became permanently disabled. Hence, he filed a petition before the Learned IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai, claiming Rs.4,00,000/- as compensation from the appellant.

3. Denying the allegations, the appellant transport corporation filed a counter affidavit before the Tribunal stating that the bus bearing Registration No.TN-23-N-1175 involved in the accident was not belonged to them and therefore they are not liable to pay any compensation to the respondent. Further, it has been stated that the alleged age and income of the respondent are not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellant, neither any witness was examined nor any document was marked. On the side of the respondent, the respondent himself was examined as PW1, one Dr.Mathiazhagan was examined as PW2 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.1,81,500/- as compensation as follows :



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S.No.	Description	Amount
1.	Loss of Earnings	72,000
2.	Transport to Hospital	7,500
3.	Extra Nourishment	7,500
4.	Medical Expenses	14,500
5.	Pain and Sufferings	30,000
6.	Permanent Disability	50,000
	Total	1,81,500

6. Aggrieved by the award, the appellant has filed this appeal before this Court stating that the Tribunal has erred 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.1,81,500/- as against the claim of Rs.4,00,000/-.

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 16.12.2008 passed by the Learned IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai, it is observed that even though the appellant has denied the liability stating that the bus involved in the accident was not belonged to them, it was not proved by proper documentary evidences, and therefore, 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 was the owner of the alleged 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 fracture of left femur, fracture of left tibia and lacerated wound over the anterior aspect of middle third measuring 10 x 3 cms exposing the tendon and bone due to the accident. However, the compensation awarded for two years towards Loss of earnings is found to be excessive. Hence, this Court is inclined to reduce it to one years. Further, it is observed that when there was no any documentary evidence to prove that the respondent was earning Rs.5,000/- per month before the accident, the Tribunal has awarded an exorbitant amount of Rs.72,000/- towards Loss of



earnings and this Court is inclined to reduce the same. Since the respondent has not placed any material to prove his income, this Court is inclined to fix his income as Rs.3,000/- as minimum wage and award Rs.36,000/- (3000 x 12) towards Loss of Earnings.

11. While considering the nature of injuries sustained by the respondent, it is observed that the sum of Rs.30,000/- awarded towards Pain and Sufferings is found to be excessive, hence this Court is inclined to reduce it to Rs.25,000/-. The respondent had claimed Rs.1,15,000/- towards Permanent Disability, but the doctor (PW2) has assessed only 50% disability, and therefore, the Tribunal has awarded Rs.50,000/- i.e. Rs.1,000/- per percentage of disability under the said head and this Court is inclined to confirm the same. It is also observed that the Tribunal has failed to award compensation for Attender Charges and Loss of Amenities. During the period of treatment, the respondent would have spent some amount for Attender and also he would have suffered from Loss of Amenities after the treatment, hence this Court is inclined to award Rs.5,000/- each under the said heads. The sum awarded under the other heads i.e. Rs.14,500/- for Medical Expenses and Rs.7,500/- each for Transport and Extra Nourishment, is reasonably awarded by the Tribunal, hence they need not any interference of this Court.

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	72,000	36,000 (3000 x 12)	Reduced
2.	Transport to Hospital	7,500	7,500	Confirmed
3.	Extra Nourishment	7,500	7,500	Confirmed
4.	Medical Expenses	14,500	14,500	Confirmed
5.	Pain and Sufferings	30,000	25,000	Reduced
6.	Permanent Disability	50,000	50,000	Confirmed



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S.No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or reduced or granted
7.	Attender Charges	-	5,000	Granted
8.	Loss of Amenities	-	5,000	Granted
	Total	1,81,500	1,50,500	Reduced by 31,000

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,81,500/- is hereby reduced to Rs.1,50,500/-. The appellant transport corporation is directed to deposit the said amount with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, less the amount already deposited, if any, within a period of four 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, the Cross Objection filed by the respondent is partly allowed and the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-VI)

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Sub-Assistant Registrar

To

1. The IV Judge,
Small Causes Court (Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer, VR Section, High Court, Madras.

+2 Ccs to Mr.V. Mohan Choudary, Advocate sr 12810.

+1 CC to Mr.S.S. Swaminathan, Advocate sr 12330.

C.M.A.No.3186 of 2012
and M.P.No.1 of 2012 and
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CA(CO)
SP(17/08/2021)