

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2020

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3571 of 2012

(Through Video Conferencing)

R.Raji ... Appellant/Petitioner

Vs.

Metropolitan Transport Corporation Ltd.,  
Represented by its Mg.Director,  
Pallavan Salai,  
Chennai 600 002. ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.12.2005 made in M.C.O.P.No.1409 of 2000, on the file of the Motor Accidents Claims Tribunal, Additional District Judge ( III Fast Track Court ) Chennai.

For Appellant : M/s.Ramya V.Rao

For Respondent : Mr.S.V.Vasantha Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the impugned Judgment and Decree dated 05.12.2005 passed by the Motor Accident Claims Tribunal, Additional District Judge ( III Fast Track Court ) Chennai in M.C.O.P.No.1409 of 2000.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.90,337.50/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellant/claimant. Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed by the appellant/claimant for enhancement of compensation.

3. The accident is said to have been taken place on 09.06.1999 at about 19.00 hrs, when the appellant was crossing from north to south direction in E.V.R.Salai, when a bus bearing Reg.No.TN.01.N.1260 belonging to the respondent driven by its driver in a rash and negligent manner and came from the

opposite direction and hit against the appellant, due to which, the appellant had sustained grievous injuries and was admitted in the hospital. At the time of accident, the appellant was aged about 20 years and was working as a sticker-labourer and was earning a sum of Rs.2,000/- per month. Due to the injuries sustained by the appellant in the accident, he stated could not do his daily activities and his work as before and therefore, claimed a sum of Rs.7,00,000/- as compensation.

4.The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the respondent. At the same time, the Tribunal has fixed 25% negligence on the part of the appellant on the ground that the appellant/claimant tried to cross the right side of the road jumped and over the center median Iron grill and fell down on the road and came near the right wheel of the bus and directed the respondent-Transport Corporation, to pay a sum of Rs.90,337.50 /- towards 75% of the award amount as compensation to the appellant. The break up of the amount awarded by the Lower Court are summarised below:

| Heads                           | Amount awarded by the Tribunal |
|---------------------------------|--------------------------------|
| Permanent disability            | Rs. 50,000/-                   |
| Pain and suffering              | Rs. 30,000/-                   |
| Transportation                  | Rs. 1,000/-                    |
| Extrra Nourishment              | Rs. 1,000/-                    |
| Medical Expenses                | Rs. 6,850/-                    |
| Loss of income                  | Rs. 21,600/-                   |
| Mental agony & attender charges | Rs. 10,000/-                   |
|                                 | * Rs. 1,20,450/-               |

\* Total Award amount : Rs.1,20,450.00  
Less the 25% contributory negligence  
on the part of the appellant : Rs. 30,112.50  
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Rs. 90,337.50  
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5. The learned counsel appearing for the appellant submitted that the Tribunal erred in fixing 25% contributory

negligence on the part of the appellant and therefore deducted 25% of compensation. The appellant sustained fracture of right shoulder bone fracture, crush injuries over the left leg, right ankle fracture and after surgery plating was done in the right shoulder and the Tribunal ought to have adopted multiplier of 15 years for awarding compensation. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 25% contributory negligence on the part of the appellant as well as for enhancement of compensation.

6. The learned counsel for the respondent submits that the Tribunal has rightly fixed 25% negligence on the part of the appellant. The amounts awarded by the Tribunal under different heads are not meagre and the appellant has not made out any case for enhancement of compensation and is therefore liable to be dismissed.

7. Heard the learned counsel for the appellant and the learned counsel for the respondent and also perused the material evidence on record.

8. From the materials available on record, it is seen that the Tribunal has held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent. The appellant had sustained fracture of right shoulder bone and right ankle and after surgery plating was done in the right shoulder. He has taken treatment as in patient at Chennai, Government Hospital between 09.06.1999 to 26.06.1999 and thereafter again admitted for treatment in the same hospital from 1.7.1999 to 22.09.1999 i.e. 80 days and thereafter plastic surgery was done in the left leg. Till 2004, the appellant has taken treatment in out patient at Tanjur, Government Hospital. The physician who deposed the evidence as P.W.2 has determined the disability as 55%, the Tribunal has considered the disability as 50% towards permanent disability.

9. Considering the gravity of injuries and the period of treatment, the Tribunal ought to have applied multiplier method and added 40% towards future prospects as per the age of the appellant. Since there is a contributory negligence as 25% on the part of the appellant and 75% contributory negligence on the part of the respondent-Transport Corporation, is not disturbed. At the same time, the compensation awarded towards under the head of loss of earning power and other heads require minor interference as the Tribunal has awarded the lesser amount.

10. Consequently, I am inclined to modify the compensation awarded under the various heads as follows:

| Heads and calculation                               |                                          | Amount awarded by this Court |
|-----------------------------------------------------|------------------------------------------|------------------------------|
| Loss of earning capacity                            |                                          |                              |
| i) Income per month                                 | Rs.1,800/-                               |                              |
| ii) Add 40% future prospects (1800 x 40%)           | Rs.720/-<br>-----<br>Rs.2,520/-<br>----- |                              |
| Total                                               |                                          |                              |
|                                                     | Rs.30,240/-                              |                              |
| iii) loss of income for 12 months (2,520 x 12)      | -                                        |                              |
| iv) Multiplier 18 (30,240 x 18)                     | Rs.5,44,320/-                            | Rs.2,99,376/-                |
| v) Permanent disability 55 % (Rs.5,44,320 x 55/100) | Rs.2,99,376/-                            | -                            |
| Loss of Income during the treatment (Rs.1800 x 12)  | Rs.21,600/-                              | Rs. 21,600/-                 |
| Transportation                                      |                                          | Rs. 5,000/-                  |
| Extra Nourishment                                   |                                          | Rs. 5,000/-                  |
| Attender Charges                                    |                                          | Rs. 10,000/-                 |
| Medical Expenses                                    |                                          | Rs. 6,850/-                  |
| Loss of amenities                                   |                                          | Rs. 10,000/-                 |
| Pain and suffering                                  |                                          | Rs. 30,000/-                 |
| Permanent disability (1,000 x 55)                   |                                          | Rs. 55,000/-                 |
| Disfiguration of face                               |                                          | Rs.10,000/-                  |
| Total                                               |                                          | *Rs.4,52,826/-               |

\* Total award amount : Rs.4,52,826.00  
Less 25% negligence on the part of the appellant : Rs.1,13,206.50  
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Net Amount : Rs. 3,39,619.50  
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Rounded off to Rs.3,40,000/-

11. Accordingly, this civil miscellaneous Appeal is partly allowed and 75% liability is fixed on the respondent/Transport Corporation and the compensation amount awarded by the Tribunal at Rs.90,337.50/- is hereby enhanced to Rs.3,40,000/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of such deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. Therefore, the respondent-Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, 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, the appellant is permitted to withdraw the same with proportionate interest and costs, less the amount if any, already withdrawn, by filing suitable application before the Tribunal. No costs.

12.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kkd

To:

1.The Motor Accident Claims Tribunal  
Additional District Judge ( III Fast Track Court )  
Chennai.

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

C.M.A.No.3571 of 2012

RR(CO)

GN(04/02/2021)