

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2015 of 2016

Muthu

... Appellant/Petitioner

Vs.

Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai,
Chennai - 600 002.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.01.2008 made in M.C.O.P.No.4505 of 2004 on the file of Motor Accident Claims Tribunal, Fast Track Court - II, Chennai.

For Appellant : M/s.A.Subadra
for M/s.M.Malar

For Respondent : Mr.S.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 07.01.2008 made in M.C.O.P.No.4505 of 2004 on the file of Motor Accident Claims Tribunal, Fast Track Court-II, Chennai.

2.The appellant filed M.C.O.P.No.4505 of 2004 on the file of Motor Accident Claims Tribunal, Fast Track Court-II, Chennai claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 20.06.2000.

3. According to the appellant, on 20.06.2000, at 12.10 p.m. when he was riding in his bicycle, the bus belonging to the respondent/Transport Corporation came in the opposite direction in a rash and negligent manner and hit against the appellant/claimant. Due to the impact, the appellant sustained grievous injuries all over his body. The accident has occurred only due to rash and negligent driving by the driver of the respondent/Transport Corporation bus. Therefore, the claimant has filed the above claim petition claiming compensation against the respondent.

4. The respondent filed counter statement denying various averments made in the claim petition and stated that the accident occurred only due to the negligence of the appellant when he suddenly crossed the road to left side without noticing the bus coming in the opposite direction and hit front side of the bus, fell down and sustained simple injuries.

5. Before the Tribunal, the claimant examined himself as P.W.1, examined Doctor Thiyagarajan as P.W.2 and Doctor Kalkura as P.W.3 and marked 15 documents as Exs.P1 to P15. The respondent did not let in any oral and documentary evidence.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation and directed the respondent/Transport Corporation, to pay a sum of Rs.92,500/- as compensation to the appellant/claimant.

7. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come out with the present appeal for enhancement of compensation.

8. The learned counsel appearing for the appellant/claimant contended that the appellant sustained fractures of left mandible parasymphysis, left zygomatic arch and left ramus and contusion left maxilla, cheek and laceration all over the body. P.W.2 and P.W.3 Doctors assessed the percentage of disability suffered by the appellant as 50%. The Tribunal without considering the same, has awarded meagre amounts towards disability. The Tribunal ought to have awarded compensation towards loss of earning capacity by adopting multiplier method. The appellant was working as a Driver in a private company and was earning a sum of Rs.4,500/- per month, in addition to Rs.50/- per day as batta and proved the same by producing documents. The respondent did not let in any contra evidence. The Tribunal without considering the above materials has granted

only a sum of Rs.10,000/- towards loss of income. The Tribunal failed to award any amount towards damages to cloth and articles, attendant charges, mental agony, future medical expenses and loss of amenities. The amounts granted by the Tribunal under other heads are meagre and prayed for enhancement of the compensation.

9.Per contra, the learned counsel appearing for the respondent/Transport Corporation made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent/Transport Corporation and perused the materials available on record.

11.It is the contention of the appellant that due to the accident, he suffered fractures and grievous injuries all over the body. P.W.2 and P.W.3 Doctors assessed the disability suffered by him as 20% and 30% respectively. The Tribunal considering the evidence of P.W.2 and P.W.3 Doctors and the disability certificates marked as Exs.P11 and P14, awarded a sum of Rs.50,000/- towards disability. The accident is of the year 2000. The amounts granted by the Tribunal for the disability is proper. The appellant has failed to prove that he suffered functional disability and requires future medical treatment. Hence, he is not entitled to compensation by adopting multiplier method and for future medical expenses. The appellant contended that he was working as a Driver in a private company and was earning a sum of Rs.4,500/- per month, in addition to Rs.50/- per day as batta. The appellant failed to prove the same. In the absence of any materials with regard to income, the Tribunal has rightly awarded a sum of Rs.10,000/- towards loss of income. The same is proper. The Tribunal considering the materials on record and the fact that the appellant has taken only out-patient treatment, did not grant any amount towards attendant charges. The total compensation awarded by the Tribunal under other heads are not meagre and there is no error in the said award of the Tribunal warranting interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal as compensation to the appellant/claimant is hereby confirmed. The respondent/Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of

M.C.O.P.No.4505 of 2004. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

gbi

To

1.The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Track Court-II,
Chennai.

Copy To

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

+1cc to Mrs.M.Malar, Advocate SR.No.12453

C.M.A.No.2015 of 2016

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GMY(16/04/2021)

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