

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2689 of 2019

Neelakandan

.. Appellant/Claimant

vs.

The Managing Director
Tamil Nadu State Transport
Corporation Ltd.,
12, Ramakrishna Road
Salem-636 007.

.. Respondent /Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 22.01.2019 passed in MCOP.No.297 of 2014 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran
For Respondent : Mr.D.Raghu

J U D G M E N T

The claimant is the appellant, who filed this appeal seeking enhancement of compensation with reference to the judgment and decree dated 22.01.2019 passed in MCOP No.297 of 2014, by the Motor Accident Claims Tribunal/Subordinate Court, Tiruchengode.

2. The accident occurred on 24.02.2014 at 1.00 p.m, near Tiruchengode to Namakkal Main Road. The Tiruchengode Rural Police Station registered case in Crime No.88 of 2014 under Sections 279 and 337 IPC. Due to the accident, the appellant/claimant sustained grievous injuries. Thus, the claim petition was filed and the Tribunal adjudicated the issues. When the appellant/claimant was proceeding towards Tiruchengode to Namakkal Main Road, the respondent Transport Corporation bus was coming towards opposite side from Rasipuram to Tiruchengode in a rash and negligent manner and dashed against the appellant/claimant, due to which he sustained grievous injuries. The Tribunal considered the facts and circumstances and based on the FIR as well as the oral evidence arrived a conclusion that the driver of the Transport Corporation bus had driven the bus in a rash and negligent manner and caused the accident.

Accordingly, the respondent Transport Corporation is held liable to pay the compensation.

3. The learned counsel appearing on behalf of the appellant mainly contended that the quantum of compensation awarded by the Tribunal is not in commensuration with the gravity of the injuries sustained by the appellant. This apart, the Tribunal has not granted any compensation towards loss of income. The Tribunal has not considered the fact that the appellant/claimant was aged about 39 years at the time of the accident and running a textile business in the name of Dhavamani for lease. In spite of these facts, the Tribunal has granted lesser compensation of Rs.1,80,656/-. Thus, the appeal is filed seeking enhancement of compensation.

4. The learned counsel appearing on behalf of the respondent/Transport Corporation disputed the contention by stating that the appellant/claimant has not produced any proof for his income. In the absence of any proof for income, the Tribunal is right in fixing the compensation. This apart, the appellant/claimant has not sustained any grievous injuries and he sustained only minor injuries. Therefore, the award of compensation by the Tribunal is reasonable and the appeal is liable to be dismissed.

5. Considering the facts and circumstances of the case, the appellant/claimant could not be able to establish the factum regarding the accident. This apart, the Tribunal came to a conclusion that the driver of the respondent/Transport Corporation bus committed the act of negligence. Regarding the quantum of compensation, the Tribunal has fixed the partial permanent disability at 10%. The disability was fixed based on the disability certificate - Ex.P6, issued by the Medical Board. Therefore, the fixation of disability by the Tribunal is in accordance with the disability certificate and no interference is called for. The medical expenses have also been granted. A sum of Rs.25,000/- was granted towards pain and suffering and for nutrition, a sum of Rs.10,000/- was granted. However, no compensation is granted towards loss of income. Admittedly, the appellant/claimant has taken treatment as inpatient. This being the factum, during the treatment period, he would not have worked and earned for his livelihood. Under those circumstances, the Tribunal ought to have granted some amount towards loss of income. Undoubtedly, the appellant/claimant has not produced any document to establish his income. However, a reasonable monthly income has to be fixed for the purpose of granting compensation towards loss of income. Accordingly, this Court is of the opinion that the accident took place during the year 2014 and considering the minimum wages to be paid, this Court is inclined to fix the monthly income of the appellant as Rs.7,500/-. Accordingly, the compensation of Rs.7,500/- per month for four 4

months is to be granted. Thus, the appellant/claimant is entitled to get the compensation of Rs.30,000/- towards loss of income. The total compensation awarded by the Tribunal is modified as detailed hereunder:

1) Disability (10% x3000)	: Rs. 30,000/-
2) Medical Expenses	: Rs.1,15,656/-
3) Pain and Suffering	: Rs. 25,000/-
4) Extra Nutrition	: Rs. 10,000/-
5) Loss of income(7500 x 4)	: Rs. 30,000/-

Total:	Rs.2,10,656/-

6. Thus, the appellant/claimant is entitled for a total compensation of Rs.2,10,656/- along with interest at 7.5% per annum. The respondent Transport Corporation is directed to deposit the modified award amount, if not already deposited with accrued interest within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit. the appellant/claimant is permitted to withdraw the modified award amount by filing an appropriate application and the payments are made through RTGS. The appellant/claimant is also directed to pay the additional court fee if any, within a period of two weeks from the date of receipt of a copy of this judgment.

7. Accordingly, the judgment and decree dated 22.01.2019, passed in MCOP No.297 of 2014, on the file of the Motor Accident Claims Tribunal/Subordinate Court, Tiruchengode, stands modified and this Civil Miscellaneous Appeal stands allowed in part. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Subordinate Judge, Tiruchengode.

2.The Section Officer,

V.R Section, High Court, Madras.

+lcc to Mr.D.Raghu, Advocate, S.R.No. 30835

C.M.A.No.2689 of 2019

RSV(CO)

GN(23/04/2021)