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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11..12..2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CIVIL MISCELLANEOUS APPEAL NO.1758 OF 2020

Krishnan

... Appellant/Petitioner

-Versus-

The Managing Director,
Tamil Nadu State Transport Corporation Ltd,
No.37, Mettupalayam Road,
Coimbatore 641 043.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 14.08.2019 made in M.C.O.P.No.42 of 2016 by the Motor Accidents Claims Tribunal (Court of Subordinate Judge), Tiruchengode, Namakkal District.

For Appellant : Mr.T.S.Arthanareeswararan

For Respondent : Mr.A.Sundaravadhanam

JUDGEMENT

The appellant is the claimant before the tribunal. Seeking enhancement of compensation, he has come forward with this Civil Miscellaneous Appeal.

2. It is the case of the appellant/claimant that on 30.08.2015 at about 07.30 a.m. when he was proceeding on his motor cycle bearing Regn. No.TN 34 U 1451 on Erode -Tiruchengode Road on the extreme left side of the road, the bus bearing Regn. No.TN 33 N 2553, belonged to the respondent corporation, which came in the opposite direction being driven by its driver in a rash and negligent manner dashed against his two wheeler as a result of which he was thrown off and sustained fracture on his right leg. Immediately, he was admitted in a private hospital where he had undergone treatment as inpatient for 15 days. Even after treatment, he had not fully recovered from the injuries. He could not able to walk properly and not able to discharge his duties as before due to the injuries. Hence, seeking compensation of Rs.15,00,000/- from the respondent corporation, he had filed the claim petition.

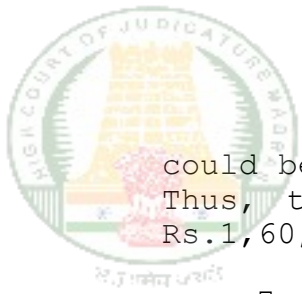


3. The respondent corporation filed their counter affidavit disputing the accident and inter alia contending that the accident was taken place due to the negligent riding of the motor cycle by the appellant and as such no negligence could be attributed to the driver of the bus of the respondent corporation. The respondent corporation also disputed the income of the deceased.

4. Before the tribunal, in order to prove his case, the appellant examined himself as P.W.1 and the one Dr. John Gurupatham, who treated the appellant at Shri Vijaya Hi-Tech Hospital at Erode, was examined as P.W.2 and as many as 8 documents were marked as Exs.P.1 to P.8. Neither any witness was examined nor any documentary evidence was adduced on the side of the respondent corporation. On considering the materials, which were placed on record, the tribunal came to a conclusion that the accident was taken place only due to the rash and negligent driving of the driver of the bus of the respondent corporation. In so far as the quantum of compensation is concerned, going by the medical evidence, the tribunal fixed the disability suffered by the appellant at 40% and held that the appellant is entitled to sum of Rs.1,20,000/- at the rate of Rs.3,000/- for each percentage of disability. Apart from the above, under conventional heads, the tribunal awarded a sum of Rs.2,90,730/-. In all, the tribunal awarded a sum of Rs.4,10,730/- as compensation. Feeling dissatisfied with the same, the claimant is before this court with the instant appeal.

5. I have heard the learned counsel for the appellant and the learned counsel for the respondent corporation and also perused the records carefully.

6. The appellant was aged 45 years at the time of accident. He was working as Manager in a Borewell firm. He had suffered a fracture on his right leg. He was assessed to have suffered 40% partial permanent disability due to the injuries. This was seriously disputed by the other side. The grievance of the appellant is that he was admitted in Shri Vijaya Hi-Tech Hospitals and had undergone surgery for the fracture of both the bones on his right leg. He was taken treatment for about 20 days. According to the medical evidence, even after the treatment he was having pain while sitting and he is not able to sit and walk as before. The accident was taken place in 2015. In this case, though the disablement is only a partial permanent, considering the consequences of the injury, this court is of the view that awarding a sum of Rs.4,000/- for each percentage of injury in the place of Rs.3,000/- awarded by the tribunal would be fair and adequate. Towards attender charges a sum of Rs.20,000/- could be awarded as against Rs.15,000/- awarded by the tribunal and towards transport charges a sum of Rs.10,000/-



could be awarded as against Rs.5,000/- awarded by the tribunal. Thus, the appellant is entitled to a sum of Rs.4,000 x 40 = Rs.1,60,000/- towards partial permanent disability.

7. Insofar as the conventional heads are concerned, considering the nature of injuries, this court is of the view that the appellant could have been bed ridden for at least six months and therefore, taking the monthly salary of the appellant as Rs.8,000/- for the loss of income for six months, a sum of Rs.48,000/- could be awarded to the appellant in the place of Rs.18,000/- awarded by the tribunal towards loss of income. Considering the nature of injuries and the agony undergone by the appellant, this court is of the view that awarding a sum of Rs.50,000/- towards pain and sufferings as against the compensation of Rs.40,000/- awarded by the tribunal would be fair and adequate. So far as the other heads are concerned, this court is of the view that the compensation awarded by the tribunal appear to be just and adequate and the same do not call for any interference by this court. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Partial Permanent Disability	1,20,000	1,60,000	Enhanced
2.	Pain and Sufferings	40,000	50,000	Enhanced
3.	Nutritious Food and Loss of personal properties	10,000	10,000	Confirmed
4.	Attender Charges	15,000	20,000	Enhanced
5.	Medical Expenses	2,02,730	2,02,730	Confirmed
6.	Transport Charges	5,000	10,000	Enhanced
7.	Loss of Income	18,000 [Rs.6,000 x 3 months]	48,000 [Rs.8,000 x 6 months]	Enhanced
	Total	4,10,730	5,00,730	Enhanced by Rs.90,000
	Rounded off to		Rs.5,00,000	



In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.4,10,730/- awarded by the Tribunal is hereby enhanced to Rs.5,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent corporation is directed to deposit the award amount directed above by this court together with interest and costs in the claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the same by making appropriate application before the tribunal. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
(Court of Subordinate Judge),
Tiruchengode, Namakkal District.
2. The Section Officer,
VR-Section, High Court,
Madras.

C.M.A.No.1758 of 2020

PP(CO)
CS/18/10/2021