

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14..10..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.1561 of 2020

Kandasamy

... Appellant /Petitioner

-Versus-

The Managing Director,
Tamil Nadu Sate Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem-7.

... Respondent /Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 30.01.2020 made in M.C.O.P.No.199 of 2014 by the Motor Accidents Claims Tribunal (Subordinate Judge), Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondent : Mr.D.Raghu, Standing Counsel
for respondent Corporation

JUDGEMENT

The Claimant before the Motor Accidents Claims Tribunal (Subordinate Court), Tiruchengode, is the appellant. He filed the claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, 1989 seeking compensation of Rs.15,00,000/- for the injuries sustained by him in the motor accident. The Tribunal, by order dated 30.01.2020, awarded a compensation of Rs.1,96,200/-. Feeling that the compensation is inadequate, the claimant is now before this court with the present appeal.

2. The case of the claimant in brief is that on 09.08.2013 around 07.30 p.m. when he was riding his motor cycle bearing TN 36 Z 7697 (TVS-50) along Tiruchengode - Kokkarayanpettai Main Road from North to South on left side, the bus bearing Regn. No. TN 30 N 0237 belonging to the respondent transport corporation, which was driven by its driver in a rash and negligent manner, dashed against the motor cycle driven by the claimant as a result of which, he fell down from the motor cycle and sustained multiple injuries all over his body. He was immediately taken to a private hospital at Tiruchengode and thereafter, he was

shifted to a specialty hospital at Erode where he had undergone treatment for more than one month. At the time of accident, he was earning a monthly income of Rs.30,000/- from his coconut vending business and due to the accident, his future earning capacity has been considerably reduced. That apart, he had also spent more than Rs.6,00,000/- towards treatment and medical expenses and also other conventional expenses. Hence, the claim petition seeking compensation of Rs.15,00,000/- from the respondent corporation.

3. The respondent corporation contested the claim petition inter alia contending that the accident was due to the negligence of the claimant. The respondent corporation had also disputed the monthly income of the claimant apart from disputing the expenses said to have been incurred towards medical treatment. Before the tribunal, in order to prove his case, the claimant examined himself as P.W.1 and the Doctor who had treated him was examined as P.W.2 and as many as 10 documents were marked on the side of the claimant and on the side of the respondent no one was examined and no document was marked.

4. Considering the materials available on record, the tribunal has come to a conclusion that the accident was taken place only due to the rash and negligence on the part of the driver of the respondent corporation. The tribunal has further come to a conclusion that due to the injuries sustained in the accident, the claimant suffered 20% permanent disability and awarded a sum of Rs.60,000/- towards loss of income. So far as medical expenses is concerned, as per the medical bills submitted by the claimant, the tribunal has awarded a sum of Rs.52,200/-. The tribunal has further awarded a sum of Rs.30,000/- towards pain and suffering, a sum of Rs.10,000/- towards nutritious diet and loss of personal goods, a sum of Rs.15,000/- towards attendant charges, a sum of Rs.5,000/- towards transportation charges and also a sum of Rs.24,000/- towards loss of income for two months and in all, the tribunal has awarded a sum of Rs.1,96,200/-. Feeling that the compensation awarded by the tribunal is inadequate, the claimant is before this court with the present appeal.

5. The learned counsel appearing for the appellant submitted that at the time of accident, the appellant was running a coconut vending shop and earning a sum of Rs.30,000/- per month and due to the injuries sustained in the accident, he was not able to continue his vending business and the disability suffered in the accident had permanent adverse impact on his earning capacity, therefore, the claimant is put to sustain future loss of income. The appellant was hospitalized for nearly one month and thereafter, for another six months, he was bed ridden, during which, the appellant had to sustain loss of

income. But, the tribunal, without considering these aspects of the matter in a proper perspective, taking the monthly income of the claimant as Rs.8,000/- has awarded a sum of Rs.24,000/- towards loss of income only for three months. For the injuries sustained in the accident, the appellant continued to take treatment in the different hospitals for more than six months. But, the tribunal without considering this aspect of matter, has awarded only a sum of Rs.5,000/- towards transportation charges.

6. Per contra, the learned counsel appearing for the respondent corporation submitted that even though the appellant claimed to have run a coconut shop, there was absolutely no evidence to substantiate his contention and to show that his monthly income was not less than Rs.30,000/-. Therefore, on considering the available evidence, the tribunal has rightly taken the monthly income of the claimant as Rs.8,000/- and awarded adequate compensation under the head of loss of income.

7. Further, according to the learned counsel appearing for the respondent corporation, so far as the disability is concerned, the certificate issued by the hospital authority would show that the appellant had suffered only 20% permanent disability due to the injuries sustained in the accident for which an adequate compensation of Rs.60,000/- has been awarded by the tribunal and the appellant is not entitled for any enhanced compensation under this head. Similarly, under the other heads also, after having taken into consideration the available materials, the tribunal has awarded just and fair compensation and as such there is no need to interfere with the award passed by the tribunal.

8. I have considered the rival submissions carefully.

9. It is a case of injury. There is no serious dispute regarding the negligence on the part of the driver of the respondent corporation or the liability of the respondent corporation.

10. So far as the monthly income is concerned, it is the case of the appellant that he was running a coconut vending shop and was earning a sum of Rs.30,000/- every month. Even though there is no documentary evidence, there is no dispute with regard to the fact that the appellant was running a coconut vending shop. Thus, from the available evidence, this court is of the considered view that the appellant might have easily earned a sum of Rs.400/- per day and therefore, the monthly income could be taken as Rs.12,000/-. But, the tribunal has fixed the monthly income of the appellant only at Rs.8,000/-. In the considered opinion of this court it is very low. Hence, the monthly income of the appellant is fixed at Rs.12,000/-.

11. On going through the available evidence, it could be seen that the appellant was taking treatment at different hospitals for nearly 15 days. It was also stated that he was bed ridden for six months. In such circumstances, for the loss of income of the appellant, a just and fair compensation of Rs.72,000/- could be awarded as against a sum of Rs.24,000/- awarded by the tribunal under the head. So far as attendant charges is concerned, since the appellant was taking treatment as inpatient for 15 days and thereafter, he was bed ridden for six months, he would have incurred expenses towards attendant charges. Thus, awarding a sum of Rs.18,800/- towards attendant charges and a sum of Rs.7,000/- towards transportation charges as against the sum Rs.15,000/- and Rs.5,000/- awarded by the tribunal under the respective heads. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same stand confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Serial Number	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Permanent Disability	60,000	60,000	Confirmed
2.	Pain and Sufferings	30,000	30,000	Confirmed
3.	Nutritious Diet and Loss of Personal Goods	10,000	10,000	Confirmed
4.	Attendant Charges	15,000	18,800	Enhanced
5.	Transportation Expenses	5,000	7,000	Enhanced
6.	Medical Bills	52,200	52,200	Confirmed
7	Loss of Income for 2 (Two) months	24,000	72,000	Enhanced
	Total	1,96,200	2,50,000	Enhanced by Rs.53,800.00

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.1,96,200/- awarded by the Tribunal is hereby enhanced to Rs.2,50,000/- 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 along with interest and costs, less the

amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Judge
(Motor Accidents Claims Tribunal),
Tiruchengode.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.D.Raghu, Advocate, S.R.No. 34399

C.M.A.No.1561 of 2020

RLD (CO)
GN (09/07/2021)



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