



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.12.2020
Pronounced on : 12.02.2021

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CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1240 of 2012

M.Basheer Ahamed
S/o.Hayath Basha

..Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation (Chennai Division)Ltd.,
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 22.12.2011 made in M.C.O.P.No.3008 of 2008 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.N.M.Muthurajan

For Respondent : Mr.K.Murthy

J U D G M E N T

(The case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed against the award dated 22.12.2011 made in M.C.O.P.No.3008 of 2008 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.3008 of 2008 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. He filed the above claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.02.2008.

3.According to the appellant/claimant, on 10.02.2008, at about 8.30 hours, while the appellant was crossing GST Road from East to West to go over to Butt Road Bus stop to board the bus to Manapakkam, and while crossing near Kathipara Great Separator, the MTC bus, bearing Registration No.TN-01-N-5506, driven by its driver in a rash and negligent manner, violating



the one way signal, came along the service road from North to South and dashed against the appellant. Due to the said accident, the appellant sustained grievous injuries. Therefore, he filed the above claim petition claiming compensation.

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4. The said claim petition was resisted by the respondent by filing a counter affidavit, disputing the nature of injuries, period of treatment, occupation and income of the claimant. It is stated that the claimant had suddenly crossed the road to the left side without noticing the bus coming in the opposite direction and that the injuries sustained by the appellant are simple injuries.

5. In order to prove his claim, the claimant examined himself and two Doctors who treated him as P.W.1 to P.W.3 and he also marked 18 documents as Exs.P1 to P18. The respondent has examined Mr.Jagadeesan, Driver of the bus as R.W.1 and no document was marked by the respondent.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident 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.2,30,200/- 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 contended that P.W.2 and P.W.3/Doctors assessed the disability suffered by the appellant as 70% but the Tribunal erroneously reduced the percentage of disability as 50% and awarded a meagre sum of Rs.90,000/- towards disability. At the time of accident, the appellant was working as Security in M/s.Iceberg Walnut Foods India and was earning a sum of Rs.4,200/- per month but the Tribunal erroneously fixed the monthly income at Rs.3,000/- and awarded a very meagre sum of Rs.21,000/- towards loss of income for seven months. The Tribunal ought to have granted compensation for loss of income for twelve months. Due to the injuries and disability, the appellant has taken treatment in the Government General Hospital, from 10.02.2008 to 13.02.2008 and from 24.06.2008 to 30.06.2008 as in-patient and the Tribunal has not awarded any amount towards "loss of amenities" and "future medical expenses". The amounts awarded by the Tribunal on the other heads are also very meagre and, therefore, prayed for enhancement of compensation.



9. Per contra, Mr.K.Murthy, learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal has rightly fixed the disability based on the assessment of disability made by P.W.2 and P.W.3/Doctors. The appellant has not produced any document to show that he lost his income during the treatment period. In such circumstances, the Tribunal awarded a sum of Rs.21,000/- as compensation towards loss of income for seven months, which is excessive. The appellant is not entitled to any amount towards attendant charges and future medical expenses. The amounts awarded by the Tribunal under different heads are not meagre and the appellant has not made out a case for enhancement of compensation 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 and perused all the materials available on record.

11. The only question that arises for consideration in this appeal is:- Whether the appellant is entitled for enhancement of compensation?

12. From the materials available on record, it is seen that the appellant was working as Security in M/s.Iceberg Walnut Foods India and was earning a sum of Rs.4,200/- per month. On the date of accident, he was aged 68 years. The Tribunal had fixed the income as Rs.3,000/- per month and adopting multiplier method and arrived at the compensation by fixing the disability on the basis of the certificates, Exs.P16 and P18 and assessment of the same by P.W.2/Doctor Mr.Rajappa, P.W.3/Doctor Mr.Saravana Bhavanantham. The whole body disability was assessed by the Tribunal as 50% and taking into consideration the income at Rs.3,000/- and adopted the correct multiplier of '5' arrived at the quantum of compensation towards permanent disability at Rs.90,000/- (Rs.3,000/- X 12 X 50/100 X '5'). Under the other heads, the Tribunal awarded the following amounts:

SL. No.	Description	Amount awarded by Tribunal (Rs.)
1.	Loss of Income	21,000/-
2.	Transportation	5,000/-
3.	Extra nourishment	10,000/-
4.	Damage to clothing	1,000/-
5.	Medical Expenses	43,200/-
6.	Attender Charges	10,000/-
7.	Pain & sufferings	50,000/-



8.	Permanent disability	90,000/-
	Total	Rs.2,30,200/-

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In all a sum of Rs.2,30,200/- was awarded as compensation by the Tribunal.

13.The Ortho Doctor had given disability certificate assessing the partial permanent disability @ 30%. The eye Doctor had assessed the disability @ 40% and overall the whole body disability is assessed at 70%. Since no amputation has been performed resulting in loss of limb, the Tribunal has fixed the disability at 50%. The disability being on two counts, in all being quantified at 70% by the claimant, the Tribunal has fixed the disability at 50% overall, which cannot be said to be erroneous and, accordingly, the fixation of disability at 50% is confirmed.

14.The appellant/claimant has marked his salary certificate issued by the private security agency showing his monthly income to be at Rs.4,200/-. However, the Tribunal has fixed the monthly income of the claimant at Rs.3,000/-. There being a record of income, and further considering the fact that the petitioner is aged 68 years and a person of good health and physique would not becoming so meagre a salary in today's context, and further the said document is not disputed and its genuineness not being questioned by the respondents, the fixation of monthly income at Rs.3,000/- by the Tribunal is erroneous. This Court, on the basis of the document, is of the considered opinion that the monthly income could be safely fixed at Rs.4,000/-. Accordingly, taking the monthly income at Rs.4,000/- and adopting the multiplier of 5 for the 50% disability suffered by the petitioner, the compensation towards permanent disability requires to be enhanced from Rs.90,000/- to Rs.1,20,000/- (Rs.4,000/- X 12 X 50/100 X 5).

15.Further, a perusal of the injuries suffered by the claimant, as is evident from the medical certificate, which has been marked by the claimant, the claimant would have been unable to attend to his routine work atleast for a period of 12 months and not 7 months as fixed by the Tribunal. Accordingly, the loss of income for 12 months could be safely arrived at Rs.48,000/-.

16.It is further seen that no amount has been awarded towards loss of amenities and future medical expenses. Considering the injuries sustained by the claimant, definitely the claimant would be incurring future medical expenses and compensation requires to be awarded on that head. This Court is of the considered view that a sum of Rs.20,000/- each under the



head Loss of Amenities and Future Medical Expenses would be just and reasonable. Accordingly, the amount of compensation awarded by the Tribunal under various heads is modified as under:

SL. No.	Description	Amount awarded by this Court (Rs.)
1.	Loss of Income	48,000/-
2.	Transportation	5,000/-
3.	Extra nourishment	10,000/-
4.	Damage to clothing	1,000/-
5.	Medical Expenses	43,200/-
6.	Attender Charges	10,000/-
7.	Pain & sufferings	50,000/-
8.	Permanent disability	1,20,000/-
9.	Loss of amenities	20,000/-
10.	Future Medical Expenses	20,000/-
	Total	Rs.3,27,200/-

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,30,200/- is hereby enhanced to Rs.3,27,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the enhanced award amount with interest as determined by this Court above, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, The Tribunal is directed to transfer the amount directly to the bank account of the appellant/claimant through RTGs on filing of necessary petition. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To

1. The IV Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

Copy to
The Section Officer,
V.R.Section,
High Court,
Madras.

C.M.A.No.1240 of 2012

VGI (CO)
SP(27/10/2021)