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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.No.2583 of 2012

Amirthalingam

.. Appellant / Claimant

Vs.

1.The Managing Director,
Metro Transport Corporation Ltd.,
Pallavan Illam, Anna Salai,
Chennai -2.

2.Oriental Insurance Company Ltd.,
173, J.N.Station Road,
Trivellore.

..Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order dated 25.03.2011, made in M.C.O.P. No.480 of 2009, on the file of the Motor Accident Claims Tribunal-cum-Additional, District Judge Fast Track Court-I, Poonamallee.

For Appellant : Mr.R.Bharath Kumar

For Respondents : Mr.K.Moorthy for R1
Mrs.R.Sreevidhya for R2

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 25.03.2011, made in M.C.O.P. No.480 of 2009, on the file of the Motor Accident Claims Tribunal-cum-Additional, District Judge, Fast Track Court-I, Poonamallee.



2.The appellant herein is the claimant initially filed M.C.O.P. No.480 of 2009, on the file of the Motor Accidents Claims Tribunal-cum-Additional, District Judge, Fast Track Court-I, Poonamallee. claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.04.2009 at about 9.00 a.m.

3. According to the claimant/appellant herein, on 05.04.2009 at about 9.00 a.m. When he was proceeding in his cycle from Velacheri Mani Road to Taramani 100' road junction, at that time the first respondent's MTC A/c. Bus bearing Regn. No.TN-01-N-7614 driven by its driver in a rash and negligent manner and suddenly turned to eastern side and dashed against the petitioner, thereby the petitioner sustained grievous injuries. Hence, he filed claim petition, claiming compensation for a sum of Rs.5,00,000/- .

4.The Tribunal upon considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the MTC A/c bus bearing Regn. No.TN-01-N-7614 belonging to the 1st respondent/Transport Corporation and directed the 2nd respondent who is the insurer of the offending vehicle to pay a sum of Rs.2,10,000/- along with interest @ 7.5% per annum as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 25.03.2011, made in M.C.O.P. No.480 of 2009, the claimant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that at the time of accident, the claimant was 48 years old, hale and healthy. He was a watchman, and was earning not less than a sum of Rs.5,000/- per month. He further submitted in Ex.P2 and P3 it has been clearly mentioned that the claimant was admitted on 5.4.2009 and surgery was done on 18.5.2009 and subsequently he was discharged on 15.06.2009. Further due to the impact of crush injury over the right foot, the right knee was amputated and the claimant was unable to walk, stand and run as before and unable to attend his regular work and he was fully thrown out of his previous employment and unable to do any work. The claimant is the only breadwinner of his family, without his income, his family is suffering from heavy financial crisis.



7. The learned counsel for the appellant further submitted that the tribunal without considering the above aspects, awarded only a sum of Rs.2,10,000/- as compensation against the claim of Rs.5,00,000/- which is erroneous. Further the tribunal has failed to see that the appellant herein has lost his right leg and thereby his future earning capacity is completely ruined and he is not able to attend day to day affairs, therefore without taking the future prospects of the claimant, the tribunal has erroneously fixed the very meagre amount as compensation. The claimant sustained disability at 70% and awarded a meagre amount of Rs.1,40,000-toward disability, without considering the disability certificate issued by the Orthopaedic Surgeon /Ex.P5 at 70%. In any event, the amounts awarded by the Tribunal under different heads, are meagre and prayed for enhancement of the compensation.

8.Per contra, the learned counsel appearing for the 1st respondent submitted that the respondent corporation A/c. Bus was insured with the 2nd respondent. Hence the MTC Ltd, is not liable to pay any compensation. He further submitted that on the side of the 1st respondent, driver of the bus namely Selvadurai was examined as RW1, but no documents were taken through him and he deposed that the accident was caused only due to rash and negligent act of the petitioner alone.

9.On the other hand, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that the doctor/PW2 who was examined before the tribunal, had assessed the permanent disability at 70%, hence the sum awarded under the said head is reasonable and does not require any enhancement. It is further contended by the learned counsel that the total compensation granted by the Tribunal under different heads is excessive and without any basis. The appellant has not made out any case and is not entitled for any enhancement of compensation and prayed for dismissal of the appeal.

10.Heard learned counsel appearing for the appellant as well as the 1st respondent- the Managing Director, Metro Transport Corporation Ltd. And the 2nd respondent-Insurance Company and perused the materials available on record.



11. From the materials on record, it is seen that it is the main contention of the appellant is with regard to the quantum of compensation awarded under the head of disability is very low. A perusal of Ex.P2- accident register & P3/Discharge Summaries issued by the Department of Orthopedic Surgery, SMCH, Chennai would reveal that the claimant was admitted on 5.4.2009 and surgery was done on 18.5.2009 and subsequently he was discharged on 15.06.2009. As per the Ex.P5 the disability certificate issued by the Orthopaedic surgeon which shows that the claimant had amputated right foot. Further the claimant due to the surgery he find difficult to walk, to use the staircase and to sit on the floor. Considering the above disability and the genuineness of the disability Certificate issued by the SMCH Hospital, Chennai, he assessed the permanent disability at 70%. The tribunal observing the fact that the claimant has not submitted any documents to prove his other expenditure, considering the available documents the tribunal assessed the same notionally. The learned counsel for the Insurance company had also strongly objected the compensation fixed as notionally by the tribunal and before this Court. Hence this Court, by considering the injuries and surgeries undergone by the claimant, is inclined to add extra one month the loss of income, and accordingly, the same is increased, without changing the sum awarded by the tribunal. Like wise the sum awarded under the head pain and sufferings, transport expenses and Extra Nourishment are also enhanced.

12. The sum awarded by the tribunal under the head 'Medical Expenses' is very much proved by Ex.P4, hence the same is confirmed. Though, the claimant claimed Rs.5,000/- per month towards earning, the tribunal by considering the age of the injured claimant has fixed Rs.5000/-per month notionally and awarded loss of income for 3 months at Rs.15,000/-. This Court by considering the treatment period undergone by the claimant increased one more month towards loss of income i.e, 5000×4 months = 20,000/-. It is seen from the award that the tribunal has granted very meagre amount for pain and suffering, Transport expenses and Extra nourishment, hence this Court is inclined to award some amount, accordingly a sum of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- is granted respectively under the said heads. Besides a sum of Rs.50,000/- is also awarded towards "Loss of dependency charges".



determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.85,000/- . No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

jrs

To

1.Motor Accident Claims Tribunal-
cum-Additional,
District Judge Fast Track Court-I,
Poonamallee.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to M/s.R.Bharath Kumar, Advocate, S.R.No.8131

+1cc to M/s.R.Sree Vidya, Advocate, S.R.No.8319

C.M.A.No.2583 of 2012

NRL(CO)
SB(14/09/2021)