



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.3038 OF 2013

K.Subramaniyan

... Appellant

-vs-

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 600 002.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 01.12.2010 made in MACT.O.P.No.155 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Villupuram.

For Appellant : Ms.V.Suguna
for M/s.C and K Law Firm

For Respondent : Mr.S.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 01.12.2010 made in MACT.O.P.No.155 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Villupuram.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 16.08.2008 when he was walking along with one Arumugam son of Kannan on the road side plat form at Abibulla Road, T.Nagar, Chennai, the Metro Transport Corporation Bus was driven by its driver in a rash and negligent manner and dashed against the claimant. Due to which



the claimant sustained multiple injuries all over the body and also grievous injuries on his head. Immediately he was taken into Hospital and he was treated from 17.08.2008 to 08.09.2008. The major injury sustained by him on his head and because of that his nerves system leads to brain is damaged, therefore he lost the vision of his both eyes. He was working as a Mason and he was earning Rs.12,000/- per month. Further, the nerves system leads to brain also damaged and because of that he is not able to speak and walk properly and always in giddiness mood which cannot be expressed. Hence the claim petition.

4. Resisting the same, the respondent filed the counter stating that the claimant was under the influence of alcohol and as such the accident was took place not in a rash and negligent driving of the respondent's bus driver.

5. On the side of the claimant, P.W.1 to P.W.4 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondent R.W.1 was examined and no exhibits were marked. On perusal of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal found that a sum of Rs.1,21,500/- (Rupees One Lakh Twenty One Thousand Five Hundred only) as compensation payable by the respondent. Aggrieved by the same, the claimant filed the present Civil Miscellaneous Appeal for enhancement of the award.

6. The learned counsel appearing for the claimant would submit that due to the accident the claimant lost his vision on both eyes. His entire nerves system leads to brain also damaged and as such he is not able to speak and walk properly. In fact, while pending the appeal here the claimant was appeared to Dr.Agarwal's Hospital to assess his vision. By the opinion dated 17.08.2019 Dr.Agarwal's Hospital opined that the claimant has socially blind vision of 3/60 and less. Therefore, he lost his entire avocation and he was only 36 years at the time of accident.

7. Per contra, the learned counsel appearing for the respondent would submit that the claimant was under the influence of alcohol at the time of accident and only because of his negligence, the accident took place and the respondent is no way liable to pay any compensation. He further submitted that the assessment of disability assessed by one Orthopedics Surgeon at 75%, whereas according to the claimant, he was suffered with blindness and as such, the assessment assessed by Orthopedics Surgeon cannot be considered and the Tribunal rightly awarded the compensation of Rs.1,21,500/- and it does not require any enhancement.



8. Heard Ms.V.Suguna, learned counsel appearing for the appellant and Mr.S.Sivakumar, learned counsel appearing for the respondent.

9. On 16.08.2008 when the claimant along with another for walking on the left hand side of the road at Abibulla Road, T.Nagar, Chennai, the bus owned by the respondent was driven by its driver and dashed against the claimant. Due to which he sustained multiple injuries and grievous injuries on his head. Immediately he was taken to Government Hospital, Chennai wherein he was treated as in-patient from 17.08.2008 to 08.09.2008. Due to the said accident he lost his vision on his both eyes. Since, the nerves system leads to brain also damaged and due to which he lost his vision. In fact, he is also not able to speak and walk properly and always in giddiness mood for the damage of nerves system leads to brain.

10. Though the P.W.4 was examined who assessed disablement of the claimant, the disability certificate shows that he is a Orthopedics Surgeon. Therefore, while pending the present Civil Miscellaneous Appeal the claimant was directed to appear before the Dr.Agarwal's Eye Hospital. Accordingly, he appeared and produced the opinion dated 17.08.2019, Dr.Santosh Balasubramaniam Ophthalmologist Surgeon opined that the claimant needs a Neurologist and Visual pathway lesions and he socially blind with vision of 3/60 and less. Therefore, the assessment assessed by the respondent at 75% is correct and it can be taken into account for awarding compensation.

11. At the time of accident, the claimant was only aged about 36 years the minimum income can be fixed at Rs.6000/- per month. That apart the Tribunal ought to have applied the multiplier method, since he lost his vision on his both eyes and cannot even walk without the help of others. Accordingly, the claimant is entitled for his Loss of Income 75% of his monthly income Rs.6000/- comes to Rs.4500/-. Accordingly, Rs.4500/- x 15 x 12 = Rs.8,10,000/-

12. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl.No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of Income	Rs.15,000/-	Rs.8,10,000/-
2	Permanent Disability	Rs.70,000/-	Nil



To

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Villupuram.

WEB COPY

Copy To

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

+1cc to M/s.C.Munusamy, Advocate, S.R.No.24341

C.M.A.No.3038 of 2013

VSN-II (CO)
RLP(15/06/2022)