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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.Nos.1320 and 1321 of 2018

S.Syed Hussain ...Appellant/Petitioner
(in C.M.A.No.1320/18)

J.Ghouse Basha @ Syed Khwaja Quthubullah Sha ...Appellant/Petitioner
(in C.M.A.No.1321/18)

Vs.

Metropolitan Transport Corporation
(Chennai) Ltd., represented by its Managing Director,
Pallavan Salai, Chennai-600 002.

...Respondent/Respondent
(in both C.M.As.)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.11.2017 made in M.C.O.P.Nos.3282 and 3283 of 2015 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act (Motor Accidents Claims Tribunal) Chennai 600 104.

In both C.M.As:

For Appellants : M/s.P.T.Saleem Fathima
For Respondent : Mr.S.Sivakumar

C O M M O N J U D G M E N T

These matter are heard through "Video Conferencing".

These Civil Miscellaneous Appeals are filed by the appellants / claimants against the common award dated 28.11.2017 made in M.C.O.P.Nos.3282 and 3283 of 2015 respectively on the file of the Motor Accidents Claims Tribunal, Chennai.



2.By consent of both the parties, these Civil Miscellaneous Appeals have been taken up for final disposal.

3.The Metropolitan Transport Corporation (Chennai) Ltd., is the respondent in M.C.O.P.Nos.3282 and 3283 of 2015 respectively on the file of the Motor Accidents Claims Tribunal, Chennai.

4.The appellants in C.M.A.Nos.1320 and 1321 of 2018 are the claimants in M.C.O.P.Nos. 3282 and 3283 of 2015 respectively, filed the above said claim petitions, claiming a sum of Rs.27,00,000/- and Rs.11,00,000/- as compensation for the injuries sustained by them in the accident that took place on 22.03.2015.

5.According to the appellants, on 22.03.2015 at about 15.30 hours while the appellant in C.M.A.No.1320 of 2018 was riding the motor cycle bearing registration No.TN 20 CZ 7758 along with appellant in C.M.A.No.1321 of 2018 as pillion rider in Dams Road from south to north and turned right towards west direction at Adhithanar salai bridge, at that time, the driver of the bus bearing registration No.TN 01 N 5238 who was coming behind the motor cycle, came at a high speed in a rash and negligent manner endangering public safety, turned to the right in the same speed and trapped the motor cycle in between the bus and parapet wall and caused the accident. In the accident, both the rider and pillion rider sustained multiple fractures and grievous injuries all over the body. Therefore, the appellant in C.M.A.No.1320 of 2018 filed claim petition in M.C.O.P.No.3282 of 2015 and the appellant in C.M.A.No.1321 of 2018 filed claim petition in M.C.O.P.No.3283 of 2015 claiming a sum of Rs.27,00,000/- and Rs.11,00,000/- respectively against the respondent/transport corporation.

6. The respondent/Transport Corporation filed separate counter statements and denied all the averments made by the appellant in both the appeals. According to the respondent, on 22.03.2015 the driver of the bus was presiding from Besant Nagar to Ayanpuram. At about 14.45 hours while the driver of the bus crossed the dams road and turned towards Adhithanar salai bridge, he saw through left rear view mirror, a motor cycle bearing registration No.TN 20 CZ 7758 coming at great speed along with pillion rider with an intention to overtake other vehicles which were going ahead to him. Further they tried to overtake the bus through left side of the road in the narrow gap



available that too in a turning. On seeing the negligent act of the rider of the motor cycle, the driver of the bus applied brake and stopped the bus. But the rider of the motor cycle rode the motor cycle in a speedy manner, lost his balance and grazed with the parapet wall and also with the left side body of the bus fell down and sustained simple injuries. Therefore, the accident has occurred only due to rash and negligent driving by the rider of the motor cycle. The police authorities lodged FIR without any proper enquiry or investigation. The driver of the bus was not responsible for the accident and hence, the respondent corporation is not liable to pay any compensation to the appellant in both the appeals. The respondent denied the age, avocation, nature of injuries and period of treatment taken by the appellant in both the appeals. In any event the quantum of compensation claimed by the claimant in both the claim petitions are highly excessive and prayed for dismissal of the both the claim petitions.

7. Before the Tribunal, the appellant in C.M.A.No.1320 of 2018 examined himself as P.W.1 and the appellant in C.M.A.No.1321 of 2018 examined himself as P.W.2 and Dr.Amarnath R Sowli was examined as P.W.3 and marked 19 documents as Exs.P1 to P19. The respondent examined the driver of the bus V.S.Pazhamalai as R.W.1 and no documentary evidence was marked.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent corporation and directed the respondent corporation to pay a sum of Rs.3,42,000/- as compensation to the appellant in C.M.A.No.1320 of 2018 and a sum of Rs.2,09,500/- as compensation to the appellant in C.M.A.No.1321 of 2018.

9. Not being satisfied with the amounts awarded by the Tribunal the appellant in both the appeals have come out with the present appeal.

10. The learned counsel for the appellant in C.M.A.No.1320 of 2018 contended that in the accident the appellant sustained multiple compound fracture and degloving injury in the left leg below knee and severe injury in the chest and skull. P.W.3 doctor examined the appellant and certified that appellant suffered 20% disability. The Tribunal awarded a meagre sum of Rs.60,000/- towards disability against the claim of Rs.2,50,000/-. At the time of accident, the appellant was aged 25 years working as a delivery cum loadman at Sahas Hardware Stores, Broadway, Chennai and was earning a sum of Rs.12,000/- to 15,000/- per month. Due to the injuries sustained by him in the accident, he lost his earning capacity, and he is



unable to do his work as before. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses, mental agony, loss of amenities, pain and suffering and loss of earning power are meagre and prayed for enhancement of compensation.

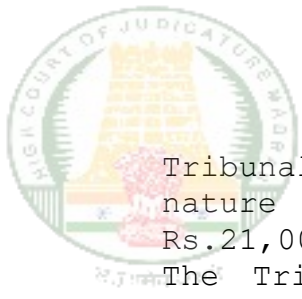
11. The learned counsel for the appellant in C.M.A.No.1321 of 2018 contended that in the accident the appellant suffered multiple grievous injuries all over the body. P.W.3 doctor examined the appellant and certified that appellant suffered 20% disability. The Tribunal awarded a meagre sum of Rs.60,000/- towards disability against the claim of Rs.2,00,000/-. At the time of accident, the appellant was aged 40 years, was the Founder, President and Teacher, Madrasa-E-Bahrul Uloom, Pulianthope, Chennai and was earning a sum of Rs.15,000/- to 20,000/- per month. Due to the injuries sustained by him in the accident, he could not able to perform his work for more than six months and a sum of Rs.25,000/- awarded by the Tribunal towards loss of earning against the claim made for a sum of Rs.80,000/- is meagre. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses, mental agony, loss of amenities and pain and suffering are meagre and prayed for enhancement of compensation.

12. Per contra the learned counsel appearing for the respondent/transport corporation contended that the Tribunal considering the nature of injuries, disability and nature of work done by the appellant in both the appeals awarded a sum of Rs.3,42,000/- and Rs.2,09,500/- respectively as compensation to the appellant in both the appeals and the same are not meagre. The amounts awarded by the Tribunal towards mental agony and loss of earning power are highly excessive in both the appeals. Hence the appellant in both the appeals are not entitled to any enhancement and prayed for dismissal of both the appeals.

13. Heard both sides and perused the material available on record.

C.M.A.No.1320 of 2018

14. From the materials available on record it is seen that in the accident, the appellant sustained multiple compound fracture and degloving injury in the left leg below knee and severe injury in the chest and skull. To prove the nature of injuries sustained by him, he examined himself as P.W.1 and examined Dr.Amarnath R Sowli as P.W.3. P.W.3 doctor who examined the appellant, certified that the appellant suffered 20% disability. P.W.3 doctor has not deposed that the appellant has lost his entire earning capacity and could not do any work. The



Tribunal considering the evidence of P.W.3 doctor, age and nature of work done by the appellant has awarded a sum of Rs.21,000/- towards loss of earning and the same is not meagre. The Tribunal considering the nature of injuries, disability, period of treatment and medical expenses incurred by him has awarded compensation towards transportation, extra nourishment, damages to cloths, medical expenses, loss of amenities and pain and suffering which are just and reasonable and hence the same are hereby confirmed. The accident is of the year 2015 and a sum of Rs.3,000/- per percentage of disability awarded by the Tribunal is meagre. But from the award passed by the Tribunal it is seen that the Tribunal has awarded excessive sum of Rs.50,000/- and 20,000/- towards loss of earning power and mental agony respectively. In view of the same, the appellant is not entitled to any enhancement.

C.M.A.No.1321 of 2018

15. From the materials available on record it is seen that in the accident the appellant suffered multiple grievous injuries all over the body. To prove the nature of injuries sustained by him, he examined himself as P.W.2 and Dr.Amarnath R Sowli as P.W.3. P.W.3 doctor examined the appellant and certified that the appellant suffered 20% disability. P.W.3 doctor has nowhere stated in his evidence that the appellant has lost his entire earning capacity and could not do any work and depend upon others for his day to day activities. The Tribunal considering the evidence of P.W.3 doctor, age and nature of work done by the appellant as awarded a sum of Rs.25,000/- towards loss of earning and the same is not meagre. The Tribunal considering the nature of injuries, disability, period of treatment and medical expenses incurred by him has awarded compensation towards transportation, extra nourishment, damages to cloths, medical expenses, loss of amenities and pain and suffering which are just and reasonable and hence the same are hereby confirmed. The accident is of the year 2015 and a sum of Rs.3,000/- per percentage of disability awarded by the Tribunal is meagre. But from the award passed by the Tribunal it is seen that the Tribunal has awarded a sum of Rs.10,000/- towards mental agony and Rs.25,000/- towards loss of earning power which are highly excessive. In view of the same the appellant is not entitled to any enhancement.

16. In the result, both the appeals are dismissed and sum of Rs.3,42,000/- and Rs.2,09,500/- awarded by the Tribunal as compensation in M.C.O.P.Nos.3282 of 2015 and 3283 of 2015 to the appellants, along with interest and costs is confirmed. The respondent-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount



already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.3282 of 2015 and 3283 of 2015. On such deposit, the appellants/claimants are permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filling necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa

To

1.The Principal Special Judge,
Special Court under E.C & NDPS Act
Motor Accidents Claims Tribunal, Chennai 600 104.

2.The Section Officer,
VR Section,
High Court, Madras.

+1 CC to M/s. P.T. Saleem Fathima, Advocate sr 59959.

C.M.A.Nos.1320 and 1321 of 2018

NK(CO)

SP(16/03/2022)