



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1989 of 2020

R. Raja

...Appellant / Petitioner

Vs

1.Ms.TVL Jayam Bus Roadlines,
No.130A, Attur Road,
Rasipuram Taluk,
Namakkal 637 408.

2.United India Insurance Co. Ltd.,
104-A, Peramanur Main Road,
Peramanur,
Salem District 636 007.

...Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.11.2019, made in M.C.O.P. No.386 of 2019, on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal) Salem.

For Appellant : Mr.A.Sathishkumar
for M/s. C.Thangaraju

For Respondents : Mr.D.Bhaskaran (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 29.11.2019, made in M.C.O.P. No.386 of 2019, on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal) Salem.

2.The appellant filed M.C.O.P. No.386 of 2019, on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal) Salem, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.09.2018.



3. According to the appellant, on the date of accident, he was traveling as a passenger in Jayaram Private Bus bearing Registration No. TN-28-AL-5279 belonging to the 1st respondent. At 5.30 pm, while crossing Attur Police Station, near Sargam Thandavarayapuram Bus Stop, the driver of the said Bus drove the same in a rash and negligent manner and without control, turned the Bus in the turning. At that time, the appellant unable to hold the Bus, fell down on the road and caused the accident. The accident occurred due to rash and negligent driving by the Bus belonging to the 1st respondent. In the accident, the appellant sustained grievous and multiple injuries. For the injuries suffered by him, he has filed the claim petition, claiming compensation against the respondents as owner and insurer of the said Bus.

4. The 1st respondent remained exparte before the Tribunal.

5. The 2nd respondent - Insurance Company filed counter statement and denied all the averments made by the appellant. The 2nd respondent denied the manner of the accident. According to the 2nd respondent, the appellant while traveling carelessly on the foot board of the Bus in a drunken mood, using the cell phone, fell down and sustained injuries. The accident did not occur due to rash and negligent driving by driver of the Bus belonging to the 1st respondent. The 2nd respondent-Insurance Company is not liable to indemnify the 1st respondent, as the appellant is tort-feasor. At the time of accident, the alleged Bus was carrying excess number of passengers than the permitted limit, in violation of policy condition and against the provision of the Motor Vehicles Act. The claim petition is bad for non-joinder of driver of the Bus involved in the accident. In any event, the appellant has to prove the nature of injuries, treatment taken, disability suffered, his age, avocation and income, to claim compensation. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and examined Doctor as P.W.2 and marked 10 documents as Exs.P1 to P10. The respondents did not let in any oral and documentary evidence.

7. 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 1st respondent and directed the 2nd respondent, as insurer of the said vehicle to pay a sum of Rs.10,19,333/- as compensation to the appellant.



8. Not being satisfied with the amounts awarded by the Tribunal in the award dated 29.11.2019, made in M.C.O.P. No.386 of 2019, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant submitted that at the time of accident, the appellant was aged 29 years and was working as a Driller in rig carriage and was earning a sum of Rs.12,000/- per month. In the accident, he suffered multiple injuries and fractures. P.W.2 Doctor examined the appellant and certified that the appellant suffered 40% disability and issued disability certificate showing the defects as intellectual disability, headache with memory loss on and off, swelling and pain over operated site and unable to lift heavy objects. The Tribunal ought to have calculated loss of earning capacity and adopted multiplier method for awarding compensation. The appellant has taken treatment as inpatient at Universal Hospital, Salem from 29.09.2018 to 18.10.2018, for a period of 17 days. The amounts awarded by the Tribunal for extra nourishment, pain and suffering, transportation, attendant charges, loss of dress, loss of earning, loss of amenities and future medical expenses and prayed for enhancement of compensation.

10. Heard learned counsel appearing for the appellant as well as 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 contention of the appellant that due to the injuries sustained in the accident, he suffered fractures and disability. P.W.2 Doctor examined the appellant and certified that the appellant suffered 40% disability and issued disability certificate to that effect. For the injuries sustained in the accident, he has taken treatment as inpatient at Universal Hospital, Salem from 29.09.2018 to 18.10.2018, for a period of 17 days. P.W.2 Doctor has deposed that the appellant suffered head ache and difficulty in lifting objects. He has not deposed that the appellant suffered any functional disability and loss of earning power. The Tribunal considering the disability certificate and evidence of P.W.2 Doctor, held that the appellant has not suffered any functional disability and awarded compensation by adopting percentage method. The appellant has taken treatment as inpatient in Hospital for 17 days. He has not produced any materials to show that he requires treatment in future. In the absence of any materials, the Tribunal excessively awarded a sum of Rs.2,00,000/- towards future medical expenses. Further, the Tribunal has awarded a sum of Rs.1,00,000/- towards extra nourishment, Rs.60,000/- towards loss of amenities and Rs.50,000/- towards pain and suffering. Considering the entire materials on record, the total compensation awarded by the



Tribunal under different heads are excessive and hence, the appellant is not entitled for any enhancement.

12. In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.10,19,333/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 2nd respondent is directed to deposit the award amount, along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.386 of 2019. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gsa

To

1. The II Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Salem.

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

+2ccs to Mr.C.Thangaraju, Advocate SR.No.1526

C.M.A.No.1989 of 2020

VBA(CO)
RVM(11/08/2021)