



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 14.12.2020

DATE ON WHICH PRONOUNCED: 11.01.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A. (MD) .No.1701 of 2010

Prabaharan : Appellant /Petitioner
Vs.

1.J.Thiagarajan

2.The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Division-2, Periyamiguparai,
District Collector Office Road,
Trichirappalli-1. : Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decreetal award dated 28.11.2007, made in M.C.O.P.No.846 of 2003, on the file of the Motor Accident Claims Tribunal/District Judge, Karur.

For Appellant : Mr.M.S.Parthipan
For R1 : given up
For R2 : Mr.M.Prakash

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award and decreetal award dated 28.11.2007, made in M.C.O.P.No.846 of 2003 on the file of the Motor Accident Claims Tribunal/District Judge, Karur.

2.The case of the claimant before the Tribunal is that on 11.06.2003, at about 06.00 p.m., the petitioner was riding his two wheeler bearing Registration No.TN-47-J-8661 in a careful manner. At that time, the second petitioner's vehicle driver was driving the bus bearing Registration No.TN-32-N-0998 in a rash and negligent manner and dashed against the petitioner, as a result of which, the petitioner fell down and sustained injuries and he was immediately taken to the Rajinikanth Hospital, Karur and took treatment for 20 days and he underwent a surgery. At the time of the accident, he was working as Sugar Cane Inspector with EID Parry and he was earning about Rs.7,000/- per month. Because of the accidental injuries, he



was not in a position to do his work as before. Claiming a compensation of Rs.5,00,000/- (Rupees Five Lakhs Only), he moved the Tribunal.

3.The second respondent's vehicle driver is arrayed as first respondent in this petition. The case of the appellant is that only because of the rash and negligent driving on the part of the petitioner, the accident took place. Without noticing the vehicle coming on the right side, he suddenly, turned the vehicle, as a result of which, the accident took place.

4.Before the Tribunal, on the side of the petitioner, three witnesses were examined and six documents marked. On the side of the respondents, one witness was examined and no document marked.

5.At the time of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent.

6.Regarding the compensation, it has awarded a sum of Rs.65,600/- (Rupees Sixty Five Thousand and Six Hundred Only) with 7.5% per annum interest and costs. Challenging the quantum, the appellant/claimant filed this appeal.

7.According to the appellant/claimant, the medical bills were not properly taken into account by the Tribunal and it ought to have awarded the compensation under the head of income loss of Rs.25,750/-, attender charges, damages and future prospects and the interest at the 7.5% per annum is low. Ex.P.2, is the Wound Certificate, showing the nature of the injury, supported by the petitioner and Ex.P.5, is the Disability Certificate issued by the P.W.3 / Doctor, who assessed the disability. Ex.P.2, shows that, there was a fracture, on the right femour bone and fracture in the patella. Both the injuries were noted as grievous in nature.

8.P.W.3, Doctor deposed in his evidence that because of the accident, there was a fracture on the right knee portion and at Karur Government Hospital, he underwent a surgery and was fitted rods and screws. Even though, the fracture on the right thigh region united properly, one more surgery is required to remove the rods. Because of the injury, the movement in that area is found restricted and experienced difficulties, while sitting and climbing steps and also pain in that area. So, he assessed the disability as 35%. He may also experience pain at the time of supervising the work in the field. So, this assessment was taken to be correct by the Tribunal. A perusal of the evidence shows that even though, there is a proper union of bones in the knees, movements were restricted and the screws and rods were also precluding in that area. As mentioned earlier, for that he requires, another surgery also.



9. Taking into account the job of the claimant, the Tribunal awarded a sum of Rs.1,000/- per percentage and awarded a sum of Rs.35,000/- under the head of partial permanent disability. Compensation for pain and suffering was assessed at Rs.15,000/-. For Medical Bills as per Ex.P.4, Rs.11,600/- was awarded, apart from the customary amounts of Transport and Extra Nutrition. Therefore, this Court, finds no serious error for fixing the compensation. But, the Tribunal fails to take into account Ex.P.2, wherein, we find that the petitioner suffered loss of income for 144 days, which works out to Rs.25,570.55 paise.

10. With regard to this document, P.W.2 was examined. He would say that, at the time of the accident, he was granted leave without salary for 144 days and so, there is a total loss of income of Rs.25,520.55 paise. He produced the medical bills, claiming the compensation of Rs.1,30,000/- and it was settled at Rs.65,600/-. But, those medical bills were not produced by the claimant before the Tribunal. The Tribunal awarded the compensation only on the basis of the medical bills / Ex.P.4. The claimant ought to have produced the medical bills before the Tribunal and proved the same for claiming balance of medical expenses. He failed to do so. Therefore, if at all, the petitioner is entitled only for income loss of Rs.25,570.55 paise. In respect of other categories, the award passed by the Tribunal is maintained. Therefore, the total award amount is enhanced to Rs.91,700/- (Rupees Ninety One Thousand and Seven Hundred Only).

11. Regarding the interest, the Tribunal, passed the award along with the interest, at the rate of 7.5%. This Court, finds no reason to enhance the same. Therefore, it is also maintained. The question of future prospects will not arise, because, there is no functional disability assessed. As mentioned earlier, there is only a partial permanent disability due to the restriction movement in that area. This will no way affect the monthly salary and work performance. So, this ground is also rejected.

12. There is no evidence with regard to the attender helps at the time of treatment as to who attended the petitioner and how much expenses were incurred. So, this ground is also not accepted.

13. Therefore, the award passed by the Tribunal is enhanced from **Rs.65,600/- (Rupees Sixty Five Thousand and Six Hundred Only)** to **Rs.91,700/- (Rupees Ninety One Thousand and Seven Hundred Only)**.

14. In the result, this Civil Miscellaneous Appeal is allowed. The second respondent/Transport Corporation herein, is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition, till the date of deposit and costs, within a period of two months from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made,



the appellant/claimant herein is permitted to withdraw the entire amount with interest and cost after deducting amount, if any, already received by him. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Motor Accident Claims Tribunal/District Judge,
Karur.

2.The Record Keeper, (2 COPIES)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.M.PRAKASH, Advocate (SR-1003[F] dated 18/01/2021)

Judgment made in
C.M.A. (MD) .No.1701 of 2010
11.01.2021

VB (11.03.2021) 4P 5C