



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 15.12.2020

DATE ON WHICH PRONOUNCED : 11.01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A. (MD) .No.235 of 2010

WEB COPY

M.Arulmozhi : Appellant /Petitioner

Vs.

Tamil Nadu State Transport Corporation,
Kumbakonam Division,
Maruthupathi Nagar,
Karaikudi Town,
Sivagangai District.

: Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.12.2009, passed in MACOP No.88 of 2007, on the file of the Motor Accidents Claims Tribunal (Sub Judge), Sivagangai.

For Appellant : Mr.G.Prabhu Rajadurai
For Mr.Robert Chandrakumar

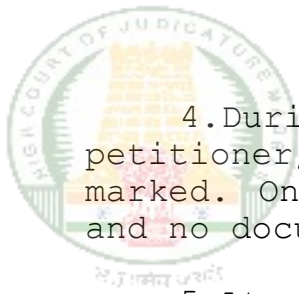
For Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 10.12.2009, passed in MACOP No.88 of 2007, on the file of the Motor Accidents Claims Tribunal (Sub Judge), Sivagangai.

2.The case of the claimant before the Tribunal is that on 07.08.2007, at about 09.00 p.m., in the night, the petitioner was riding his two wheeler bearing Registration No.TN-63-U-7149 in Kottaiyur road, at that time, the offending vehicle bearing Registration No.TN-63-N-0544, was driven by its driver in a rash and negligent manner and dashed against the petitioner. As a result of which, he sustained injuries. Claiming compensation amount of Rs.4,00,000/- (Rupees Four Lakhs only), he approached the Tribunal on the ground that because of the accidental injuries, he was in the hospital for 20 days and underwent a major surgery and also applied 120 days medical leave. Because of the accidental injuries, he is unable to do his work properly as before.

3.The case of the respondent before the Tribunal is that the accident is not disputed. It is denied that the accident took place only due to the rash and negligent driving, on the part of the respondent's vehicle driver, who is the appellant herein. Compensation claimed is on the higher side.



4. During enquiry before the Tribunal, on the side of the petitioner, two witnesses were examined and fourteen documents were marked. On the side of the respondent, one witness was examined and no document was marked.

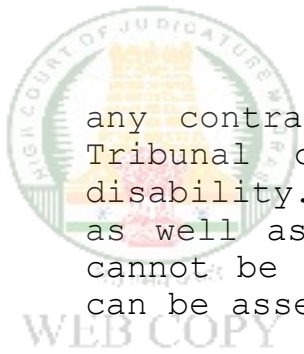
5. At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the appellant's vehicle driver and fixed the liability.

6. Regarding the quantum, it has taken into account the disability certificate and medical records and assessed the disability at 19% and awarded Rs.40,000/- (Rupees Forty Thousand only) compensation for the disability, which was added to the medical expenses and customary amounts. Totally, Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand only) was awarded as compensation. Against which, the claimant is before this Court.

7. The question that arises for consideration, is that ***whether the compensation fixed by the Tribunal is fair, just and reasonable?***

8. P.W.1, who is the petitioner, examined himself and would say in the course of evidence that there was a fracture on the right leg from the hip to knee region at both the bones. Apart from that, there were multiple fractures in the knee area and because of the accidental injuries, he was in the hospital for more than 20 days and now, he was unable to do any work without assistance of any one. He spent all days as bed-ridden. His vehicle was also damaged in the occurrence. But, he would admit that he is working as Assistant Engineer in Tamilnadu Electricity Board, Karaikudi, even on the date of the enquiry before the Tribunal. So, the question of income loss will not arise. His contention is that he applied 120 days on medical leave. That may be correct. There is no evidence or record to show that he was on medical leave without any salary. So, his argument that since he took 120 days on medical leave, his taking leave in future has been lost. But, such sort of contention is not acceptable. In that regard, no compensation was payable as rightly held by the Tribunal.

9. Regarding the injury, P.W.2 has been examined, who, assessed the disability and he would say that, he suffered both bone fracture on the right thigh region, for which, he underwent surgery. By which, rods and screws were implanted on the right leg. Tibia bones were also found fractured, for which also, he underwent surgery. Moreover, there was a fracture on the right 5th finger, for which, conservative treatment was done. The bones united properly. But, because of the fracture, movement as well as the capacity of the right leg are restricted. He may also experience pain while sitting and using Indian toilets. So, he assessed the disability at 52%. But, the Tribunal reduced the same to 19%, without the assistance of



any contra expert evidence. So, it is not proper either for the Tribunal or for this Court to reduce the percentage of the disability. So, when the petitioner suffered fracture on three bones as well as in the right leg, the assessment of disability at 52% cannot be considered to be on the higher side. So, the disability can be assessed at 52% as fixed by the Doctor.

10. There is no functional permanent disability affecting the earning capacity of the petitioner. The petitioner was on permanent job. So, the question of losing of earning capacity because of the accidental injuries, did not arise. If at all, the petitioner is entitled only for compensation on the basis of percentage at the rate of Rs.2,000/- per percentage. So, for 52%, the compensation is **Rs.1,04,000/-** (Rupees One Lakh and Four Thousand only).

11.The Tribunal awarded **Rs.60,000/-** for medical treatment, **Rs.10,000/-** for pain and sufferings, **Rs.10,000/-** for attender charge, extra nutrition and transport charge, which are found to be reasonable. So, no enhancement is required on these heads.

12.Therefore, the total compensation is enhanced from **Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand Only)** to **Rs.1,84,000/- (Rupees One Lakh and Eighty Four Thousand Only)**.

13.In the result, the Civil Miscellaneous Appeal is allowed by enhancing the compensation to Rs.1,84,000/-. The respondent 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 cost, 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 petitioner 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 (CS I)

// True Copy //

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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 Accidents Claims Tribunal (Sub Judge),
Sivagangai.

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

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-923[F] dated
18/01/2021)

C.M.A. (MD) .No.235 of 2010
11.01.2021

AC (CO)
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