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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA No. 2112 of 2018

Shanmugam

... Appellant/Petitioner

Vs

The Managing Director
BMTC, Shanthi Nagar,
Bangalore.

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the order and Decree dated 01.09.2017 made in M.C.O.P.No. 838 of 2015 passed by the learned Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri, in so far as not awarding the entire claim amount of Rs.20,00,000/- claimed by the petitioner and awarding only a sum of Rs.6,84,281/- is concerned (now the appellant is seeking the enhancement of compensation for the balance amount of Rs.13,15,719/-).

For Appellant : Mr. S.H. Haja Nazuruddin
Senior Counsel
for Mr. S.Sathish Rajan

For Respondent : Mr. T.Thiyagarajan

J U D G M E N T

This Appeal has been directed against the Judgment dated 01.09.2017 in M.C.O.P.No. 838 of 2015 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Dharmapuri, the claimant is the appellant herein.

2. M.C.O.P.No. 838 of 2015 had been filed by the appellant herein consequent to injuries suffered owing to a motor vehicle accident. On 18.06.2015 at around 11.40 when the claimant was coming back from his native place and was waiting in the bus



stop, in Marappanapalya bus stop, NH 4, TUMKUR road, Bengaluru, a bus belonging to the respondent /BMTC Bangalore, bearing Registration No. KA 57 F 0399 had dashed against the petitioner. The petitioner fell to the ground and suffered injuries. A First Information Report in Crime No. 95 of 2015 under Sections 279 and 337 of IPC was registered by the Yeswanthapura traffic Police station. The petitioner was taken to Sapthagiri Hospital and it was found that he had suffered both bone fracture in his right forearm and also bilateral multiple rib fracture in chest and hermotoerax. He was treated as inpatient from 18.06.2015 to 22.06.2015. He was thereafter discharged but again had to take treatment in another hospital from 22.06.2015 to 02.07.2015. He was in hospital for a total period of about 11 days. Claiming damages for the injuries suffered and for the medical expenses incurred, M.C.O.P.No. 838 of 2015 had been filed.

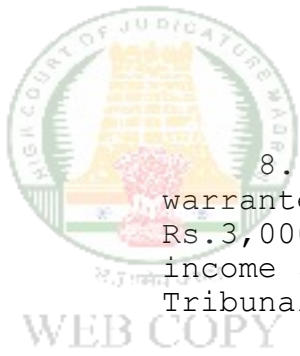
3. The respondent had joined issue by filing a counter. The allegation that the driver of the respondent bus was culpable and the reason for the accident was denied.

4. The claim petition, was taken up for enquiry by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Dharmapuri, and by an order dated 01.09.2017, a total compensation of Rs.6,84,281/- was granted.

5. The Tribunal took up as a first issue for consideration, the issue of negligence and in this connection, had examined the documents filed relating to the accident particularly the First Information Report which had been marked as Ex.P-1 and the translated version as Ex.P-2 and also the wound certificate Ex.P-3. The Tribunal also considered the discharge summaries of the hospital where the claimant had taken treatment. It was found that as a fact, the claimant was standing in the bus stop when the bus came, driven in a rash and negligent manner, and dashed against the claimant herein, owing to which, he suffered injuries. It was therefore determined that the accident occurred only due to the negligence of the driver of the bus I would confirm said finding.

6. The Tribunal then proceeded to determine the compensation which has to be granted to the claimant.

7. It must be mentioned that on the date of the accident, the claimant was aged about 38 years old and was said to be doing Interlocking Bricks ring work, which was said to be a self profession. During the course of trial, he did not produce any document to show that he was so engaged and doing Interlocking Bricks ring work or any document to show the monthly income which he earned. He claimed in the petition that he was earning a sum of Rs.30,000/- per month.



8. The Tribunal had determined that the injuries suffered warranted determination of disability at 40% and also determined Rs.3,000/- per percentage and therefore, determined the loss of income at Rs.1,20,000/-. With respect to the medical bills, the Tribunal had granted a sum of Rs.3,70,981/-.

9. The learned Senior Counsel appearing on behalf of the appellant assailed the order by stating that the Tribunal had not granted or determined any amount towards the monthly income. It was no doubt true that no documents have been presented but the learned Senior Counsel asserted that a notional income should have been fixed and some compensation should have been given for loss of income for the period during which the appellant was in hospital.

10. In view of the fact of the case, let me determine the monthly income at Rs.15,000/-. The appellant was in hospital for a period of 22 days and to recover from such hospitalisation and also taking into account the fact that he had suffered serious fracture in his right forearm and also bilateral multiple rib fractures, I would grant concession that he was not able to work for some considerable period. The Tribunal had granted a sum of Rs.50,000/- under this head, and I would rather not disturb that.

11. The learned counsel for the respondent however pointed out one serious error committed by the Tribunal in doubling atleast three bills which had been presented by the claimant towards expenses for medical treatment. Such statement by the learned counsel for the respondent cannot be either disputed or denied by the learned Senior Counsel for the appellant.

12. It stares on the face of the record.

13. The claimant had claimed a sum of Rs.1,130/- towards a medical bill, which had been presented as incurred on 19.06.2015. The Tribunal on a wrong assumption, had granted that amount twice over. This has to be necessarily interfered with and from the compensation granted towards medical expenses, namely, a sum of Rs.3,70,981/-, a sum of Rs.1,130/- will have to be deducted. Similarly, another medical bill for a sum of Rs.8,950/- which had been incurred on 22.06.2015 had also been taken twice over by the Tribunal and therefore, necessarily adjustment will have to be made on that particular ground and this would necessitate further deduction of Rs.8,950/- from the amount granted towards medical expenses.

14. It is also seen from the records that on 02.07.2015 by totalling a series of medical expenses, the Tribunal had granted a sum of Rs.2,68,488.42. However, the actual amount which had



been incurred was only Rs.1,05,240/-. This adjustment also have to be made.

15. These are statements made by me on the basis of the records produced before the Tribunal in the form of Exhibits, namely, Ex.P-11. There has been unfortunately a mistake in the totalling of the medical bills and when a consolidated medical bill had been presented, that total was Rs.1,05,240/-. Thereafter, the hospital authorities had given break up for that particular consolidated amount and that break up had again been added to the consolidated amount of Rs.1,05,240/-, finally, coming to a total amount of Rs.2,68,488.42. Adjustment will have to be necessarily made in this regard also and therefore, after adjusting the excess amounts of Rs.1,63,248.42 the net amount will be Rs.1,05,240/-.

16. A summary of the above would indicate that from the total amount of Rs.3,70,981/- granted towards medical expenses, deductions will have to be made to Rs.1,130/-, Rs.8,950/- and Rs.1,63,248/- which would mean a total deduction Rs.1,73,328/-. If this amount is deducted then the actual amount which can be granted towards medical bill would Rs.1,97,653/-.

17. In view of the above reasoning, this Civil Miscellaneous Appeal is disposed of by granting the following compensation:-

(i) towards disability 40% x 3,000	=	Rs. 1,20,000/-
(ii) towards pain and suffering	=	Rs. 25,000/-
(iii) towards medical bills	=	Rs. 1,97,653/-
(iv) towards personal expenses	=	Rs. 46,300/-
(v) towards Nutritious food	=	Rs. 25,000/-
(vi) towards mental agony	=	Rs. 25,000/-
(vii) towards future medical expenses	=	Rs. 22,000/-
(viii) towards loss of income	=	Rs. 50,000/-

Total	=	Rs. 5,10,953/-

18. Accordingly, this Court holds that the award of the Tribunal has to be reduced from Rs.6,84,281/- to Rs.5,10,953/-. The reduced amount is Rs.1,73,328/-.



19. It is brought to the notice of this Court that the entire award passed by the Tribunal has been deposited along with interest @ 7.5% per annum.

20. Accordingly, the Civil Miscellaneous Appeal is disposed of as follows:-

(i) The award of the Tribunal is redetermined as aforesaid.

(ii) The excess amount deposited by the respondent shall be refunded along with proportionate interest.

(iii) The claimant is at liberty to withdraw his share along with accrued interest from the Claims Tribunal without filing any formal application seeking permission.

(v) The interest granted by the Tribunal at 7.5% per annum for the date of petition is confirmed.

No costs.

21. It is brought to the notice of this Court that the appeal was filed with a delay of 98 days. Naturally, interest cannot be mulcted on the respondent for the particular period of delay in filing the appeal. Therefore, while calculating interest, the interest for 98 days may be deducted and for the balance number of days or years, the interest may be granted to the appellant herein. Interest is to be granted at 7.5% Simple Interest.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dharmapuri.



Copy to:

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

+2ccs to Mr.T.Thiyagarajan, Advocate, S.R.Nos.19418, 19976

CMA No. 2112 of 2018

KV(CO)
SU(07/06/2022)