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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.80 of 2018

B.Boopathi Raja

...Appellant/Petitioner

Vs.

1. Dharmendra

2. The Tamil Nadu State Transport Corporation,
Limits (CBE-II) Ltd.,
Rep.by its Managing Director,
Chennai Road,
Erode - 2.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of M.V.Act, 1988, to allow the above CMA by setting aside the fair and decretal order dated 08.09.2017 passed in M.C.O.P.No.277 of 2016 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge Court), Erode and enhance the same.

For Appellant : Ms.Dhanwanthi
for Mr.K.Govi Ganesan

For Respondent : Mr.M.Arun
No.2 for Mr.A.Sundaravadanan

JUDGMENT

The claimant in MCOP No.277 of 2016 on the file of the Special Sub- Court/Motor Accidents Claim Tribunal, Erode, is the appellant herein. Necessity to file the said petition arose owing to the fact that the claimant B.Boopathi Raja, while crossing East-West Erode-Sathy road from North to South on the Eastern side near Erode new bus stand North entrance, on 08.06.2016 at around 09.20 p.m., was hit by a bus belonging to the Tamil Nadu State Transport Corporation bearing registration No.TN 33 N 2749. It was claimed that the driver of the bus was driving the bus in a rash and negligent manner and it was cause for the accident. Claiming compensation for the injuries suffered, the claim petition was filed.

2.The claim petition came up for consideration before the



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Special Sub Court/Motor Accidents Claim Tribunal, Erode. By an order dated 08.09.2017, the Tribunal had granted a compensation of Rs.5,37,2000/-under the various heads, which are as follows:

Headings	Amount in Rs.
1. Loss of Income	13000
2.Transport Expenses	5,000 . 00
3.Extra nourishment	6,000 . 00
4.Damages for clothes and Articles	500 . 00
5.Medical Expenses	36,700 . 00
6.Pain and Sufferings	50,000 . 00
7.Disability and Loss of earning power	4,26,000 . 00
Total	5,37,200 . 00

3.During the course of trial, the claimant had examined himself as PW1 and also examined the doctor as PW4. The respondent had examined one witness as RW1. The claimant filed 25 documents, which were marked as Ex.P1 to 25. The relevant documents would be Ex.P1, the copy of the First Information Report, Ex.P2, Rough Sketch of the place of the accident, Ex.P3, Observation Mahazer, Ex.P4 Motor vehicle Inspector's report, Ex.P5 Accident Register, Ex.P6 Charge sheet, which are all documents are relating to the accident per se. With respect to the treatment taken by the claimant, he had filed Ex.P7 to Ex.P11, which are the copies of X-ray report, Medical bills, Prescriptions and Outpatient sheets. The claimant was hospitalised on two different spells and with respect to that particular aspect, he had also filed Ex.P14 to Ex.P22, which are discharge summary, hospital bills, medical bills, scan report, laboratory report and also X-ray report, the disability certificate of the petitioner had been marked as Ex.P25.

4.The Tribunal took up for consideration as the first issue, the manner, in which the accident occurred, whether it was owing to the rash and negligent driving of the driver of the transport bus. For this purpose, the Tribunal, considered, the first information report Ex.P1 and also the charge sheet Ex.P6, wherein, it has been held that the driver of the bus was liable for the offence of causing the accident and the final report also reflected that the driver of the bus was the accused. In view of those particular facts, negligence was placed on the driver of the bus. It was observed that the claimant was only walking as a pedestrian, when the bus dashed against him. He was walking on the platform. Therefore, again considering that particular aspect, negligence was placed on the driver of the



bus. I would confirm such finding.

5. Thereafter, the Tribunal proceeded to determine the compensation to be granted. The claimant, at the time of the accident, was aged 24 years. He claimed that he was working in a textile goods packing concern. This involved loading of textile goods and their delivery to various textiles shops owners in and around Erode. The claimant stated that he earned a monthly income at Rs.15,000/- per month.

6. During the course of trial, unfortunately, no documentary evidence was produced on that particular aspect. Oral evidence has also not been adduced. The Tribunal, therefore, went with the evidence of the claimant alone and observed that it was a self serving evidence and determined that the monthly income would only be at Rs.6,500/-, I would interfere with that particular finding. The accident occurred in the year 2016 and in the year 2016, even if there were no oral and documentary evidences produced, with respect to the income of a claimant, the notional income, which was generally determined by this Court, was at Rs.9,000/- per month.

The tribunal then proceeded further to determine the loss of income owing to hospitalisation and in that regard, had granted a sum of R.13,000/-(6,500 x 2 months). This necessarily has to be interfered with and the amount granted under that particular head would now be Rs.18,000/- (9,000/- X 2 months = 18,000/-).

Further, the Tribunal considered the evidence of PW2 & PW3 employees in two separate hospitals, who had spoken about the hospitalisation of the claimant. PW4 was the Doctor, who had issued the disability certificate. The nature of the injuries suffered were fracture in the right shaft of femur (thigh bone) owing to which, the flesh in the right leg around the knee had peeled off. The nature of such injuries reflected not only fracture of femur bone, which is one of the hardest bone in the human body but also in view of the fact that the skin had peeled down, plastic surgery had to be done over the area where the skin had peeled down. To heal the fracture, normally, a plate is fixed, so that, the bone gets joined and a surgery is done. Around nine months to one year later, again a surgery is done to remove the steel plate. It is for that reason the claimant was in the hospital on 2 or 3 occasions. The functional disability was determined at 25% and that had been accepted by the Tribunal. I would not disturb that finding. The functional disability is determined at 25%.

The Tribunal then proceeded to determine a sum of Rs.75,000/- as compensation, which can be reasonably granted towards disability suffered and I would not interfere with that particular amount.

With respect to loss of earning power, the Tribunal granted



a sum of Rs.3,51,000/- by adopting multiplier method by taking a sum of Rs.6500/- as monthly income. Since the monthly income has been determined as Rs.9,000/- the loss of earning power would be as follows:

Rs.9,000/- x 12 = Rs.1,08,000/- which is annual income and by adopting a multiplier 18, the amount is Rs.19,44,000/-. Taking functional disability at 25%, it would be Rs.19,44,000/- x 25/100 = 4,86,000/-.

The Tribunal had granted a sum of Rs.50,000/- towards pain and suffering, but I would grant only a sum of Rs.10,000/- towards pain and suffering.

The Tribunal had granted a sum of Rs.36,700/- towards medical expenses on consideration of bills produced and I would retain the same amount. The Tribunal granted Rs.500/- towards damages for cloth and articles but that is interfered with and a sum of Rs.2000/- is granted. The Tribunal had granted Rs.6,000/- towards extra nourishment and Rs.5,000/- towards transport expenses and they are not interfered with. The Tribunal had not granted any amount towards attender charges and an amount of Rs.5,000/- is granted. Now, total compensation, which is granted as follows:

Transport Expenses	..	Rs.	5,000/-
Extra Nourishment	..	Rs.	6,000/-
Attender charges	..	Rs.	5,000/-
Damages for Cloths and			
Articles	..	Rs.	2,000/-
Medical Expenses	..	Rs.	36,700/-
Pain and suffering	..	Rs.	10,000/-
Disability	..	Rs.	75,000/-
Loss of earning power	..	Rs.	4,86,000/-

Total	..	Rs.	6,25,700/-

7. In fine, the appeal is partly allowed. No costs. The award is modified. The compensation award is enhanced to Rs.6,25,700/-.

8. The second respondent/Transport Corporation is directed to deposit the enhanced amount, less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of filing of the petition till date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to



withdraw the award amount on proper identification, after adjusting the amount, if any, already withdrawn.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms

To

The Motor Accident Claims Tribunal,
(Special Subordinate Judge Court),
Erode.

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.22493

+1cc to Mr.A.Sundaravadhanam, Advocate, S.R.No.22943

C.M.A.No.80 of 2018

VBM(CO)
RGA(05/07/2022)