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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3183 of 2014

Marimuthu

... Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Salem Division I Limited,
Ramakrishna Road,
Salem - 636 007.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.07.2014 made in M.C.O.P.No.90 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

[The matter is heard through "Video Conferencing"]

This Civil Miscellaneous Appeal has been filed against the award dated 09.07.2014 made in M.C.O.P.No.90 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2.The appellant is the claimant in M.C.O.P.No.90 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.01.2013.



3. According to the appellant, on 11.01.2013 at about 08.00 P.M., while he was riding the XL Super motorcycle bearing Registration No.TN 34 A 6804 on the left side Tiruchengode - Namakkal Road, near Kumaramangalam Santhai to go for Kumaramangalam, the driver of the bus who was driving the bus behind the motorcycle from East to West, drove the same in a rash and negligent manner and dashed against the motorcycle driven by the appellant and caused the accident. In the accident, the appellant sustained multiple grievous injuries all over the body. Immediately after the accident, the appellant was taken to Government Hospital, Tiruchengode, where he has taken first aid treatment. Thereafter, he was shifted to Mohan Kumaramangalam Hospital, Salem, where he has taken treatment as inpatient for more than one month. Therefore, the appellant filed the above said claim petition claiming a sum of Rs.5,00,000/- as compensation against the respondent-Transport Corporation.

4. The respondent-Transport Corporation filed counter statement and denied all the averments made by the appellant. The respondent denied the manner of accident as alleged by the appellant. According to respondent, the driver of the bus was driving the same in a careful manner at a moderate speed by following the rules and regulations and while he was proceeding to Kumaramangalam Sandhai, the appellant who was riding the motorcycle in a rash and negligent manner, suddenly crossed the road without any signal and invited the accident. Therefore, there is no negligence on the part of the driver of the bus belonging to respondent. Further, the appellant was not possessing valid driving license to drive the motorcycle on the date of accident. The respondent denied the age, avocation, income and nature of injuries sustained by the appellant. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined himself as P.W.1, Dr.R.Krishnasamy was examined as P.W.2, Dr.Saravanan was examined as P.W.3 and one M.Sekar, eyewitness to the accident was examined as P.W.4 and 10 documents were marked as Exs.P1 to P10. The respondent-Transport Corporation examined one C.Babu as R.W.1 and no document was marked.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that both the appellant as well as the driver of the bus belonging to respondent are equally responsible for the accident, fixed 50% negligence on both of them, awarded a sum of Rs.90,559/- as compensation to the



appellant and directed the respondent-Transport Corporation to pay a sum of Rs.45,280/- being 50% of the award amount as compensation to the appellant.

7. Challenging the portion of the award fixing 50% negligence on the part of the appellant as well as for enhancement of compensation granted by the Tribunal in the award dated 09.07.2014 made in M.C.O.P.No.90 of 2013, the appellant has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that the Tribunal erroneously fixed 50% negligence on the part of the appellant only on assumption and presumptions. The Tribunal ought to have fixed entire negligence on the part of the driver of the bus belonging to respondent as there is no negligence on the part of the appellant. The appellant sustained grievous injuries in the accident and underwent surgery. Artificial hip joint was implanted and proved the same by examining himself as P.W.1, Dr.R.Krishnasamy as P.W.2 & Dr.Saravanan as P.W.3 and by marking documents. P.W.2/Doctor examined the appellant and certified that the appellant suffered 23% disability and issued Ex.P8/disability certificate to that effect. The Tribunal erroneously reduced the percentage of disability from 23% to 20% and awarded a meagre sum of Rs.40,000/- as compensation for 20% disability at the rate of Rs.2,000/- per percentage of disability. The Tribunal ought to have applied multiplier method and awarded compensation for disability. The appellant has taken first aid treatment at Government Hospital, Tiruchengode and thereafter he was shifted to Mohan Kumaramangalam Hospital, Salem, where he has taken treatment as inpatient for more than one month. The amounts awarded by the Tribunal towards transportation, extra nourishment, loss of income and damages to clothes are meagre. At the time of accident, the appellant was a Mason Centring Worker, was aged 50 years and was earning a sum of Rs.10,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.5,000/- per month as notional income of the appellant and granted compensation towards loss of income only for three months. The Tribunal failed to award any amount towards attendant charges, loss of amenities and future medical expenses and prayed for setting aside the portion of the award fixing 50% negligence on the part of the appellant as well as for enhancement of compensation.

9. Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the accident has occurred only due to the negligence on the part of the appellant



as he only suddenly crossed the road without any signal. There is no negligence on the part of the driver of the bus, but the Tribunal erroneously fixed 50% negligence on the part of the driver of the bus. Therefore, the Tribunal ought to have fixed entire negligence on the part of the appellant. The Tribunal reduced the percentage of disability assessed by P.W.2/Doctor from 23% to 20% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and also assessment of disability by P.W.2/Doctor appears to be excessive. Hence, the appellant is not entitled to compensation for 23% disability. The appellant has not proved his avocation and income by producing valid documents. In the absence of any documentary evidence with regard to avocation and income of the appellant, a sum of Rs.5,000/- per month fixed by the Tribunal as notional income of the appellant is not meagre. The Tribunal considering entire materials on record, has awarded compensation under different heads which is not meagre and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent-Transport Corporation and perused the entire materials on record.

11. From the materials on record, it is seen that the appellant filed claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.01.2013. According to the appellant, on 11.01.2013 at about 08.00 P.M., while he was riding the XL Super motorcycle bearing Registration No.TN 34 A 6804 on the left side of Tiruchengode - Namakkal Road, near Kumaramangalam Market, he crossed the main road and went to left side of the road. At that time, the bus bearing Registration No.TN 30 N 0563 belonging to respondent-Transport Corporation driven by its driver in a rash and negligent manner, dashed on the motorcycle and appellant was thrown out and thus, the accident has occurred. According to appellant, the accident occurred only due to rash and negligent driving by the driver of the bus belonging to respondent-Transport Corporation. To substantiate this, the appellant examined himself as P.W.1 and examined one M.Sekar as P.W.4, who is an eyewitness to the accident and marked F.I.R., which was registered against the driver of the bus as Ex.P1. The appellant also contended that in the accident he sustained grievous injuries and suffered fracture. He has taken treatment as inpatient at Mohan Kumaramangalam Hospital, Salem for 11 days from 11.01.2013 to 21.01.2013 and at Krishna Hospital, Tiruchengode for 8 days from



21.01.2013 to 28.01.2013. At the time of accident, the appellant was a Mason Centering Worker, was aged 50 years and was earning a sum of Rs.10,000/- per month. Due to the injuries sustained by the appellant in the accident, he could not do the work as he was doing earlier. To substantiate the injuries sustained by him, the appellant examined P.W.2 & P.W.3/Doctors and marked Exs.P5 to P10 to that effect. On the other hand, it is the case of the respondent that while the driver of the bus was driving the bus slowly, the appellant without seeing the bus, suddenly crossed the road and invited the accident. The appellant did not possess any driving license and without knowing to drive the motorcycle, he drove the motorcycle and caused the accident. The injuries sustained by the appellant are simple in nature. The appellant is not entitled for any enhancement. In support of their case, they have examined the Conductor of the bus as R.W.1. P.W.1 in his cross examination has admitted that he did not possess driving license at the time of accident. P.W.4 has deposed that the accident occurred while the appellant was crossing the road. The Tribunal considering the evidence of P.W.1, P.W.4 and Ex.P3/Rough Sketch, held that accident occurred in the middle of the road and appellant also contributed to the accident. Further, the Tribunal also held that the place of occurrence is a busy road and had the driver of the bus noticed the appellant, he could have avoided the accident. On these findings, the Tribunal held that the accident occurred due to negligence of both the appellant and driver of the bus and fixed 50% negligence each on appellant and driver of the bus. There is no error in fixing negligence on the part of the appellant as well as driver of the bus.

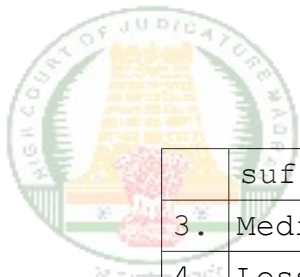
12.As far as quantum of compensation is concerned, the appellant sustained grievous injuries in the accident and the appellant examined P.W.2 & P.W.3/Doctors to prove the injuries and disability suffered by him. P.W.2/Doctor on examining the appellant and medical records, assessed the disability suffered by the appellant at 23%. The Tribunal reduced the percentage of disability from 23% to 20% on the ground that P.W.2/Doctor is not the treated Doctor and percentage of disability assessed by P.W.2/Doctor appears to be excessive one. In the absence of any contra evidence to the evidence of P.W.2 and Ex.P8/disability certificate by the respondent, reduction of 3% of disability by the Tribunal is not correct. Therefore, the appellant is entitled for 23% disability. The appellant has not proved that he suffered loss of earning capacity and functional disability. Hence, he is not entitled to compensation for loss of earning capacity by adopting multiplier method. The accident is of the year 2013 and a sum of Rs.2,000/- per percentage of disability



awarded by the Tribunal is meagre. Considering the year of accident, the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.69,000/- (Rs.3,000/- X 23% of disability).

13.It is the further case of the appellant that at the time of accident, he was working as Mason Centering Worker and was earning a sum of Rs.10,000/- per month. He has not filed any document to prove the avocation and income. In the absence of any evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident occurred in the year 2013 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the appellant, a sum of Rs.10,000/- per month as claimed by the appellant is fixed as his notional income. Due to the injuries sustained by the appellant in the accident, he would not have attended his work atleast for a period of four months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.40,000/- (Rs.10,000/- X 4 months). The appellant has taken treatment as inpatient at Mohan Kumaramangalam Hospital, Salem for 11 days from 11.01.2013 to 21.01.2013 and at Krishna Hospital, Tiruchengode for 8 days from 21.01.2013 to 28.01.2013. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Hence, the appellant is entitled to a sum of Rs.20,000/- towards attendant charges and Rs.15,000/- towards loss of amenities respectively. Considering the nature of injuries, disability and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation and extra nourishment are enhanced to Rs.5,000/- and Rs.15,000/- respectively as the amounts awarded by the Tribunal are meagre. The appellant has not produced any medical records to show that he requires further medical treatment. Hence, he is not entitled to any amount towards future medical expenses. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	40,000/-	69,000/-	Enhanced
2.	Pain and	10,000/-	10,000/-	Confirmed



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	suffering			
3.	Medical expenses	18,059/-	18,059/-	Confirmed
4.	Loss of Income	15,000/-	40,000/-	Enhanced
5.	Transportation	1,500/-	5,000/-	Enhanced
6.	Extra nourishment	5,000/-	15,000/-	Enhanced
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Attendant charges	-	20,000/-	Granted
7.	Loss of amenities	-	15,000/-	Granted
	Total	Rs.90,559/-	Rs.1,93,059/-	Enhanced by
	50% of the award amount	Rs.45,279/- rounded off to Rs.45,280/-	Rs.96,529/- rounded off to Rs.96,530/-	Rs.1,02,500/- (Rs.1,93,059/- - Rs.90,559/-)

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the total compensation awarded by the Tribunal at Rs.90,559/- is hereby enhanced to Rs.1,93,059/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit 50% of the award amount, (i.e., Rs.96,530/-) now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.90 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchengode.

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

+1cc to Mr.D.Venkatachalam, Advocate Sr.4518

C.M.A.No.3183 of 2014

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srg 04/03/2022