



C.M.A.No.631 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 09.02.2023

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THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.631 of 2018

R.Somu

...Appellant

vs.

Metropolitan Transport Corporation Ltd.,
rep. by its Managing Director,
Pallavan Salai,
Chennai – 600 002.

...Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, for enhancement of compensation against the Decree and Judgment order dated 22.12.2016 in M.C.O.P.No.4432 of 2010 on the file of the learned Special Sub Judge No.2, Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Ms.Ramya V. Rao

For Respondent : Mr.S.S.Swaminathan



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JUDGMENT

WEB COPY This appeal has been filed by the appellant for enhancement of compensation against the Decree and Judgment dated 22.12.2016 in M.C.O.P.No.4432 of 2010 on the file of the learned Special Sub Judge No.2, Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

2.It is the case of the appellant that on 03.01.2009 about 12.40 hours, when the petitioner/appellant drove the auto rickshaw, bearing Registration No.TN-04-Z-8794 from Kamarajar Salai to Besant Road Junction, Chennai, a MTC Bus, bearing Registration No.TN-01-N-3652, driven by its driver in a rash and negligent manner, endangering to public safety, came from behind, overtaking the auto and hit the side of the body of the auto. As a result, the auto was capsized and the petitioner/appellant had sustained grievous injuries all over the body. Therefore, the respondent/Transport Corporation is liable to pay compensation to the



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petitioner/appellant. Hence, the petitioner/appellant filed a claim petition before the Tribunal. The Tribunal, after framing issues and recording evidence, has fastened the liability on the respondent/Transport Corporation and ultimately quantified the compensation in the following manner:-

Sl.No.	Head	Amount in Rs.
1.	Medical Bills	Rs.45,000/-
2.	Compensation under Section 140 of the Motor Vehicle Act	Rs.25,000/-
	Total	Rs.70,000/-

3.The learned counsel for the appellant would submit that the appellant had sustained fracture of frontal bone with fracture of tibia and fracture of right hand fingers 4 and 5 and the Doctor has assessed the disability at 65%. The compensation awarded to the appellant is very low. The appellant is an auto driver by profession and he had certainly suffered from functional disability and considering the multiple fractures, the Tribunal ought to have



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applied multiplier method in computing the future loss of earnings.

The Tribunal did not award adequate compensation towards loss of income during treatment period, extra nourishment, attendant charges, loss of amenities, future treatment, loss of earning power, pain and sufferings, etc., Hence, she prays to set aside the Award of the Tribunal by allowing this appeal.

4.Per contra, the learned counsel for the respondent/Transport Corporation has submitted that the Tribunal has taken each and every aspect into consideration and has awarded the just compensation, which does not require any interference by this Court. In fact, the Tribunal has taken note of the evidence and documents on record and ultimately arrived at the compensation, which is perfectly valid in the eye of Law. Hence, he prays for dismissal of the appeal.

5.Heard the learned counsel for the appellant and learned counsel for the respondent and perused the materials available on



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record.

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6.On a perusal of the records, it is seen that the Tribunal after analysing the evidence came to a conclusion that the accident had occurred due to the rash and negligent manner of the petitioner/appellant and awarded a sum of Rs.25,000/- under Section 140 of the Motor Vehicles Act. On the basis of the medical bills, the Tribunal had awarded a sum of Rs.45,000/-towards medical bill to the petitioner/appellant. Therefore, the petitioner is entitled to a sum of Rs.70,000/- as compensation.

7.According to the learned counsel for the appellant, the Tribunal had erroneously granted compensation under Section 140 of the Motor Vehicle Act. Further, no amount has been awarded under the head of disability, pain and sufferings. The Tribunal had failed to work out on the Head of Loss of income. The schedule also provides specifically for other heads also.



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8.PW1, who is the driver of auto, deposed that the accident had occurred due to the rash and negligent driving of the bus. On perusal of the materials available on record, it is seen that on the complaint given by the driver of another auto, Ex.P.1 - First Information Report has been registered. To prove the contention of the FIR, the respondent has not examined any independent witness. In these circumstances, this Court could not believe the evidence of PW1 and RW1, driver of the bus.

9. The appellant and the respondent have not clearly proved on whom the negligence lies. As per the FIR, the accident is proved and the involvement of both the vehicles have not been denied. Proof of negligence is not necessary under Section 163A(2) of the Motor Vehicles Act. Hence, this Court is inclined to decide the claim under Section 163-A of the Motor Vehicles Act. In this case, the claimant is



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aged about 47 years at the time of the accident. Considering his age, the appropriate multiplier to be adopted is 13. As per II Schedule, the annual income is fixed at Rs.40,000/- per annum. Due to the accident, the petitioner has sustained grievous injuries and the Doctor assessed his disability at 65%. The disability assessed by the Doctor considering the injuries, is very excessive. Hence, this Court takes the disability at 21% for the injuries sustained by him. Now, the compensation has to be awarded under the head of loss of income is Rs.1,09,200/- (Rs.40,000/- x 13 x 21/100). As per II Schedule, a sum of Rs.15,000/- is granted for medical Expenses. A sum of Rs.5,000/- is awarded under the head of pain and sufferings and the details of the modified compensation are as under:

Sl.No.	Head	Amount in Rs.
1.	Medical Bills	Rs. 15,000/-
2.	Pain and Sufferings	Rs. 5,000/-
3.	Loss of Income	Rs.1,09,200/-
	Total	Rs.1,29,200/- rounded off to Rs.1,29,200/-



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10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The Transport Corporation is directed to deposit the entire compensation amount of Rs.1,29,200/- with interest @7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.4432 of 2010 on the file of the learned Special Sub Judge No.2, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the appellant is permitted to withdraw the entire award amount with proportionate accrued interest and costs by making necessary applications.

11. The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. No costs.



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Index: yes/no

Internet : yes/no

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To

1.The Motor Accidents Claims Tribunal,
Special Sub Court No.2,
Small Causes Court,
Chennai.

2.The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai – 600 002.

3.The Section Officer,
V.R.Section,
High Court, Madras.



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