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C.M.A.No.1994 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

CORAM

THE HON'BLE MR.JUSTICE P.B.BALAJI

Civil Miscellaneous Appeal No.1994 of 2018

A.Yakupbasha @ Basha

..Appellant

-VS-

The Managing Director
Metropolitan Transport Corporation Limited,
Chennai.

..Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the order dated 10.02.2015 passed in M.A.C.T.O.P.No.2396 of
2013 on the file of Motor Accident Claims Tribunal, III Court of small
Cause, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.S.Sivakumar
Stdg. Counsel

* * * * *



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JUDGMENT

The claimant who suffered injuries in the motor accident on 31.03.2013 is the appellant herein.

2. The appellant, as claimant before the Tribunal, sought for compensation to the tune of Rs.6,00,000/- for the injuries sustained by him in the said motor accident alleging rash and negligent driving on the driver of the MTC bus belonging to the respondent. The Corporation, as respondent before the Tribunal, filed a counter and denied the claims made by the appellant herein and attacked the amount of compensation sought by the claimant to be highly excessive.

3. Before the Tribunal, the claimant and one Dr.Saravana Bhavanantham were examined as P.Ws.1 and 2 and Exs.P.1 to P.5 were marked on the side of the appellant. On the side of the respondent, the bus driver was examined as R.W.1 and no documents were marked on the side of the respondent.



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4. The Tribunal, on considering the oral and documentary evidence adduced by the parties, found that the accident occurred only because of rash and negligent driving of the respondent's driver and therefore, held that the respondent, as owner, was vicariously liable to compensate the appellant.

5. Insofar as the quantum is concerned, the Tribunal awarded a sum of Rs.1,00,500/- as compensation to the appellant/claimant.

6. Aggrieved by the award of Rs.1,00,500/- and contending that it was far below just and fair compensation, the claimant has preferred the present Civil Miscellaneous Appeal.

7. The learned counsel for the appellant mainly contended that despite the evidence of P.W.2, the doctor, noticing and finding disability at 30%, the Tribunal, without assigning any reason, has fixed the disability at 25%. He has also argued that a sum of Rs.2,000/- per percentage factored by the Tribunal was also far less than what ought to have been taken and at least, a sum of Rs.3,000/- should have



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been taken towards per percentage disability. The learned counsel also contended that towards loss of earning, despite the claimant letting in oral evidence that he was employed as a Cooking Master and earning a sum of Rs.10,000/- per month, the Tribunal has fixed only a sum of Rs.6,000/- as his income and calculated loss of earning for a period of 2 1/2 months as against the claim and evidence of the appellant that for more than ten months he was not able to earn any income.

8. Heard the learned counsel for the respondent/Corporation, who contended that the award passed by the Tribunal was reasonable and in the absence of any evidence in support of the income and also the doctor who treated the appellant not being examined, no interference is warranted and therefore, prayed for dismissal of the Civil Miscellaneous Appeal.

9. This Court has paid anxious consideration to the rival submissions made on either side, besides also considered the oral and documentary evidence available on record.



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10. Insofar as the income of the appellant, it is not in dispute that the appellant was employed as Cooking Master. However, it is the fact that the appellant has not filed any evidence to substantiate his claim that he was earning a sum of Rs.10,000/- per month. Therefore, this Court, taking into account the fact that the accident had occurred in the year 2013 and considering the nature of employment of the appellant, who would have been earning not less than Rs.7,500/- per month, proceeds to fix the monthly income at Rs.7,500/-.

11. The claimant's case is that he has lost income from 31.03.2013, that is, the date of accident, till 31.01.2014 and claimed a sum of Rs.1,00,000/- under that head. However, there is no evidence adduced on the side of the appellant to substantiate the loss of earning for the entire length of ten months. However, this Court, considering the nature of injuries, holds that the appellant would not have been in a position to resume his employment for at least three months and accordingly, arrives at a compensation of Rs.22,500/- under the head of loss of earning.



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12. This Court does not find any reason to interfere with the compensation awarded under other heads, namely, Rs.5,000/- towards transport to hospital, Rs.5,000/- towards extra nourishment, Rs.500/- towards damage to clothing, Rs.5,000/- towards medical expenses and Rs.20,000/- towards pain and suffering.

13. As rightly contended by the learned counsel for the appellant, the Tribunal has not assigned any reason for fixing the disability at 25% ignoring the evidence of the doctor, P.W.2, who had deposed assessing the disability at 30%. It is contended by the learned counsel for the respondent/Corporation that in the absence of the evidence of the concerned doctor who treated the appellant, the evidence of P.W.2 ought not to have been taken into account at all. It is, however, common knowledge that doctors being professionals cannot be expected to disregard their professional commitments and work and come to Court for giving evidence in support of the patients they have treated in the past. In fact, this Court has already considered this issue in C.M.A.No.2643 of 2019 (between Pandian and Srinivas Kesineni and another) by judgment dated 09.03.2023 holding



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that the mere fact that the concerned doctor who treated the claimant was not examined would not give rise to suspecting or refusing to believe the version of the doctor who was examined before the Tribunal. This Court finds that the disability arrived at by the doctor, P.W.2, ought to have been taken by the Tribunal and the same should have applied at the rate of Rs.3,000/- per percentage, instead of Rs.2,000/- per percentage.

14. Accordingly, adding a sum of Rs.7,500/- towards loss of earning and a sum of Rs.40,000/- towards permanent disability, a total sum of Rs.1,48,000/- is awarded as compensation to be payable to the appellant/claimant.

15. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the award of compensation from Rs.1,00,500/- as awarded by the Tribunal to a total sum of Rs.1,48,000/- (Rupees one lakh forty eight thousand only). It is submitted by the learned counsel for the respondent Transport Corporation that the award amount has already been deposited and also withdrawn by the appellant. However, the enhanced amount of Rs.47,500/- shall be deposited by the respondent



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Corporation with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs, to the credit of M.A.C.T.O.P.No.2396 of 2013 on the file of Motor Accidents Claims Tribunal, III Court of Small Causes, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant shall be at liberty to take out necessary application for the payment out of the enhanced amount awarded by this Court following due process. The appellant/claimant is directed to pay necessary Court fee on the enhanced award amount, if any, within a period of two weeks from the date of receipt of a copy of this order. No costs.

24.03.2023

Speaking/Non-speaking order

Index : Yes / No
Internet : Yes / No

sra

To

The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.



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P.B.Balaji, J.

(sra)

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