



CMA.No.1825 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2023

PRONOUNCED ON : 21.07.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.M.A.No.1825 of 2021

Sunthar Raj

... Appellant

- Vs -

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

... Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 09.03.2020 made in M.A.C.T.O.P.No.1901 of 2017 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : M/s. Sunithi Abirami for M.Malar

For Respondent : Mr.S.Swaminathan



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JUDGMENT

This instant appeal has been filed against the award passed by the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai, dated 09.03.2020 in M.C.O.P.No.1901 of 2017, awarding a sum of Rs.74,000/- as compensation.

2. For the sake of convenience, the parties are referred to as per their ranks mentioned in the petition.

3. The brief facts which give rise to the instant appeal is that, on 08.01.2017 at about 11.30 a.m while the petitioner is travelling as a passenger in the Metropolitan Transport Corporation (MTC) bus bearing Registration No. TN-01-N-8894, the driver of the said bus drove the same in a rash and negligent manner, and at the junction of Konnur High Road, when the bus ran over the speed breaker, an iron rod broken from the seat and hit the petitioner. Due to such accident, the petitioner sustained grievous injury. According to the petitioner, the accident occurred only due to rash and negligent driving of the driver of the MTC bus.



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4. The respondent filed a counter statement stating that there was no negligence on the part of the driver of the bus bearing Registration No. TN 01-N-8894. Further they also dispute the age and avocation of the petitioner. Therefore, he prayed for the dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as PW1 and one Dr.K.J.Mathiazhagan was examined as PW2 and marked 9 documents as Ex.P1 to Ex.P9. On the side of the respondent, Investigator, Headquarters, Accident Branch of MTC, one Ravichandran was examined as RW1 and marked Ex.R1.

6. The Tribunal, based on the materials available on record and the evidence, has observed that the accident had occurred due to the negligent driving of the driver of the MTC bus and hence fixed the liability on the Transport Corporation and awarded a total compensation of Rs.74,000/- with interest at 7.5% per annum from the date of the petition. Feeling aggrieved with the quantum so awarded, the petitioner/claimant has preferred this appeal seeking enhancement of the same.



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7. The learned counsel for the appellant would submit that the Tribunal has erred in awarding a meagre sum of Rs.74,000/- as against the claim of Rs.35,00,000/- made by the appellant / claimant. The learned counsel further submitted that the Tribunal without considering the disability given by the doctor, on his own wrongly reduced the disability from 20% to 10% and the Trial Court has not taken into consideration of the fact that due to the accident petitioner has taken treatment as in-patient from 08.01.2017 to 15.01.2017. It is also submitted that the amounts awarded towards other heads are meagre and hence, the compensation awarded by the Tribunal needs interference at the hands of this Court by way of enhancement.

8. Per contra, the learned counsel for the respondent/Transport Corporation submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference by this Court.



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9. Heard the learned counsel appearing for the appellant and learned counsel appearing for the respondent and perused the materials available on record carefully.

10. The Tribunal arrived at a conclusion that there was negligence on the part of the driver of the MTC bus bearing Registration No.TN 01 N 8894. Against the above finding, no appeal has been filed. Therefore, the only point for consideration is whether the compensation awarded by the Trial Court (i.e.,) a sum of Rs.74,000/- is just compensation.

11. The learned counsel for the petitioner would draw the attention of this Court to the disability certificate which is marked as Ex.P8, and also draw the attention of this Court about the evidence of the doctor PW2. The doctor gave a disability certificate assessing the partial permanent disability as 20 %. Further, during his cross examination the doctor has admitted that there may be variation in respect of assessment from one doctor to another doctor, and the variation may be of 5 %.



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12. Further the learned Trial Court after considering all aspects has ultimately arrived at the conclusion that though the PW2 doctor has assessed the Partial permanent disability as 20 %, since the disability certificate was obtained not from the duly constituted Medical Board, as ordered by this Hon'ble High Court in ***TATA AIG General Insurance Co. Ltd. v. Prabhu, reported in (2016) 1 TNMAC 609 (DB)***., fixed the disability at 10%. It is pertinent to mention here that the Doctor PW2 has not given any treatment to the petitioner. But he only gave a disability certificate. He also admits the possible variation of percentage from one doctor to another doctor. In such circumstances, the rational followed by the Trial court holding 10% of the disability cannot be found faulted.

13. However, while awarding the compensation the Trial Court fixed only Rs.3,000/- per percentage of disability and thus, awarded a sum of Rs.30,000/- as compensation towards disability. In the recent judgment ***reported in 2020 (1) TNMAC 617 [M.Chinnathambi Vs. S.Deepa and another]***, the Division Bench of this Court, for the accident that occurred from the year 2016, awarded a sum of Rs.5,000/- towards disability per percentage. This case pertains to the accident of the year 2018.



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14. In view of the above Judgment of the Division Bench, this Court is inclined to award a sum of Rs.5,000/- towards per percentage of disability. Therefore, the petitioner is entitled to an amount of Rs.50,000/- towards Partial Permanent Disability.

15. Coming to the loss of income, the Trial Court took notional income of Rs.10,000/-, and holding that the petitioner would not have gone to work for atleast one month, awarded a sum of Rs.10,000/- towards loss of Income. Considering the nature of the injury sustained by the petitioner, that too in his face, there has every possibility that the petitioner would not have gone for job atleast for a period of two months. Therefore, the compensation towards loss of income is hereby enhanced to Rs.20,000/-.

16. That apart, the Tribunal has awarded Rs.600/- towards Medical expenses, Rs.10,000/- towards pain and suffering, Rs.5,000/- towards Transportation to hospital, Rs.5,000/- towards Additional Nourishment, Rs.1,000/- towards damages to clothes, Rs.2,400/- towards attender charges and Rs.10,000/- towards loss of amenities, which, in the opinion of this Court, are just and reasonable and hence, the same need not be interfered.



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17. Thus, the breakup details of the award passed by the Tribunal and the enhancement made by this Court are tabulated as follows:

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>	<i>Award confirmed or enhanced or increased or reduced</i>
1.	Disability	Rs.30,000/-	Rs.50,000/-	Enhanced
2.	Medical Expenses	Rs.600/-	Rs.600/-	Confirmed
3.	Loss of Income	Rs.10,000/-	Rs.20,000/-	Enhanced
4.	Pain and sufferings	Rs.10,000/-	Rs.10,000/-	Confirmed
5.	Transportation to hospital	Rs.5,000	Rs.5,000/-	Confirmed
6.	Additional Nourishment	Rs.5,000/-	Rs.5,000	Confirmed
7.	Damages to Clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
8.	Attender Charges	Rs.2,400/-	Rs.2,400/-	Confirmed
9.	Loss of Amenities	Rs.10,000/-	Rs.10,000/-	Confirmed
	Total	Rs.74,000/-	Rs.1,04,000/-	Enhanced

18. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.74,000/- is hereby enhanced to Rs.1,04,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of this amount. The respondent / Transport Corporation is directed to deposit the modified amount of compensation, as ordered above, along with interest and costs, after deducting the amount if any, already deposited, within a period of six (6) weeks from the date of



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receipt of the copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the same on making proper application before the Tribunal. It is made clear that the appellant/claimant has to pay the appropriate Court fee, before receiving the awarded amount. There is no order as to the cost of this appeal.

21.07.2023

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Index : yes/no

Speaking/Non Speaking Order

To

1. The Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section, High Court,
Madras.



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C.KUMARAPPAN.J

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