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C.M.A.No.1961 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1961 of 2018

Settu

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Vellore.

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the award dated 19.08.2015 made in M.A.C.T.O.P.No.189 of 2013 on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate, Thiruvannamalai.

For Appellant : Ms.A.Subadra

For Respondent : Mr.S.S.Santhosa Kumar



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J U D G M E N T

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Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai, in M.A.C.T.O.P.No.189 of 2013, dated 19.08.2015, this appeal has been filed by the claimant for enhancement of the compensation amount.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The case of the petitioner/injured claimant is that on 06.09.2012 at about 11.45 p.m., while he was travelling as a passenger in the respondent's Government Bus bearing Registration No.T.N.23 N 2165 from Trichy towards Tiruvannamalai and when the bus was proceeding near Kizhathazhanur Village in Trichy - Vellore Road, the respondent's driver had driven the bus in a rash and negligent manner with high speed and lost his control and dashed against unknown mini lorry, which came from opposite direction. Due to the said impact, the petitioner sustained grievous



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injuries. Immediately, the petitioner was admitted in the Government Hospital, Tirukoilur for treatment. Hence, the petitioner filed the claim petition seeking compensation of Rs.10,00,000/-.

4. The said claim petition was resisted by the Transport Corporation by filing a counter statement denying the manner of accident as projected by the petitioner in the claim petition. Thus, they sought for dismissal of the claim petition.

5. To substantiate the case on the side of the claimant, P.W.1 and P.W.2 were examined and the documents were marked as Ex.P1 to Ex.P12. On the side of the respondents, R.W.1 and R.W.2 were examined and no documentary evidence was produced.

6. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the bus bearing Registration No.T.N.23 N 2165. By coming to such conclusion, the Tribunal awarded a sum of Rs.4,34,000/- as



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compensation and directed the respondent/Transport Corporation to pay the above compensation. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

<i>S. No.</i>	<i>Heads under which the compensation is awarded</i>	<i>Amounts awarded by the Tribunal in Rs.</i>
1	Permanent disability	90,000
2	Medical Expenses	2,94,000
3	Pain and Sufferings	25,000
4	Extra Nourishments	15,000
5	Transportation Expenses	10,000
	Total	4,34,000

7. Challenging the said award passed by the Tribunal, the claimant has filed the present appeal seeking enhancement of the compensation.

8. The learned counsel for the appellant/claimant has submitted that, at the time of accident, the injured/claimant was aged about 46 years and he was a florist and earning Rs.15,000/- per month. Due to the accident, the injured sustained multiple injuries all over the body and he completely



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lost his earning capacity. The learned counsel further submitted that P.W.2/Doctor was examined to prove the disability suffered by the injured and he assessed disability at 50%, however, the Tribunal fixed the disability at 45% and awarded a sum of Rs.90,000/- under the head "Permanent disability" by fixing Rs.2,000/- per percentage. The Tribunal ought to have adopted multiplier method while awarding compensation towards loss of earning capacity. He further submitted that a sum of Rs.3,000/- per percentage of disability has to be fixed for the accident, which took place in the year 2012, whereas, the Tribunal had fixed only Rs.2000/- per percentage of disability. Further, the compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

9. The learned counsel for the respondent/Transport Corporation fairly conceded that during the relevant period, Rs.3,000/- per percent has to be fixed on the disability.

10. Heard the learned counsel for the appellant and the learned



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counsel for the respondent and perused the records.

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11. The accident is admitted. The offending vehicle involved in the accident is also admitted and the liability of the respondent Transport Corporation is also not in dispute. The only dispute now raised before this Court is regarding the quantum of compensation awarded by the Tribunal.

12. This Court, as the first appellate Court and being the final fact finding Court, has to re-appreciate the entire evidence and give independent finding and also see as to whether the Tribunal has rightly appreciated the evidence and awarded 'just' compensation or not, or it requires to be enhanced.

13. On a perusal of the records, it is seen that due to the accident, the appellant sustained multiple injuries all over his body. To substantiate the injuries sustained by him, the appellant has examined P.W.2/Doctor, who assessed the disability of the appellant at 50%. The



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Tribunal, after analysing the Disability Certificate, assessed the disability of the injured at 50%, which reflects only right hand bone fracture of the injured, however, whole body disability of the injured was not assessed and therefore, the Tribunal had fixed the disability at 45% and awarded Rs.2,000/- per percent of disability. Based on the submissions made by the learned counsel on either side, this Court finds that during the relevant period, Rs.3,000/- per percentage of disability has to be fixed towards disability.

14. In view of the above submissions, the sum of Rs.2,000/- per percentage of disability is set aside. Instead of Rs.3,000/- per percentage of disability is awarded. Hence, this Court fixes the disability at 45% and awards a sum of Rs.1,35,000/- [Rs.3000x45] under the head "Permanent disability" by fixing Rs.3,000/- per percentage.

15. The amounts awarded by the Tribunal under all the other heads are fair and reasonable and hence, they are confirmed.



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16. Thus, the total compensation payable to the appellant/claimant is re-calculated and tabulated below:

<i>S. No.</i>	<i>Heads under which the compensation is awarded</i>	<i>Amounts awarded by the Tribunal in Rs.</i>	<i>Amounts awarded by this Court in Rs.</i>
1	Permanent disability	90,000	1,35,000
2	Medical Expenses	2,94,000	2,94,000
3	Pain and Sufferings	25,000	25,000
4	Extra Nourishments	15,000	15,000
5	Transportation Expenses	10,000	10,000
	Total	4,34,000	4,79,000

17. Accordingly, the compensation awarded by the Tribunal at **Rs.4,34,000/-** is hereby enhanced to **Rs.4,79,000/-** together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount, less the amount, if



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any, already withdrawn. The appellant shall pay necessary Court fee, if any,
on the enhanced compensation.

18. With the above observations and directions, the Civil
Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

11.08.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Thiruvannamalai.

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



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P.VELMURUGAN, J.

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