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C.M.A.No.90 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.90 of 2022

A.Arokiyam

...Appellant/Petitioner

Vs.

Tamil Nadu State Transport Corporation Ltd.,
Thirunelveli.

...Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.5085 of 2015, dated 11.02.2020, on the file of II Special Sub Judge, Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellant : Mrs.A.Subadra for

Mr.A.Shanmugaraj

For Respondent : Mr.C.Gowthamaraj



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation granted by the Tribunal in the award dated 11.02.2020 made in M.C.O.P.No.5085 of 2015 on the file of the learned II Special Sub Judge, Small Causes Court (Motor Accident Claims Tribunal) Chennai.

2. The appellant filed M.C.O.P.No.5085 of 2015 on the file of the learned II Special Sub Judge, Small Causes Court (Motor Accident Claims Tribunal) Chennai claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.03.2010.

3. The appellant filed a claim petition stating that on 02.03.2010, at about 07.00 p.m., while he was riding his motorcycle bearing Registration No.TN-69-C-9293 from East to West direction in Vilathikulam to Vembur road, a bus bearing Registration No.TN - 57 - N -1173, driven by its driver belonging to the respondent herein in a rash and negligent manner, hit the motorcycle and caused the accident. In the accident, the appellant sustained



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grievous injuries. Thus, the appellant filed claim petition claiming compensation against the respondent.

4. The respondent/Transport Corporation filed a counter statement denying all the averments made by the appellant in the claim petition and stated that the driver of the bus drove the same with due care and caution observing traffic rules; that the rider of the two wheeler drove the same in an inebriated condition; that the accident occurred only due to the negligent act of the rider of the two wheeler and stated that in any event, the total compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined two witnesses as P.W.1 and P.W.2 and marked six documents as Exs.P.1 to Exs.P.6. The respondent neither examined any witness nor marked any document on their side.



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6. The Tribunal after considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the bus belonging to the respondent/Transport Corporation and directed the respondent to pay a sum of Rs.65,000/- as compensation to the appellant.

7. Aggrieved by the said order, the appellant has preferred the present appeal seeking enhancement of compensation.

8. Learned counsel for the appellant submitted that though the appellant had examined Doctor/P.W.2 to prove the disability suffered by him and marked Ex.P.6/disability certificate issued by P.W.2 stating that the Tribunal had erroneously reduced the same to 10% and awarded compensation by percentage method without any basis. The learned counsel further submitted that P.W.2 was a Government Doctor and there is no reason to disbelieve his evidence; that the Tribunal ought to have awarded compensation for 30% disability at the rate of Rs.3000/- per percentage of disability and hence prayed for enhancement of compensation.



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9. Learned counsel for the respondent/Transport Corporation, *per contra*, submitted that the appellant was not examined by the Medical Board; that P.W.2/Government Doctor had admitted in his cross examination that he had not followed the guidelines prescribed for assessing disability; that in the light of the said evidence, the Tribunal was right in reducing the disability to 10% and awarding compensation by percentage method and prayed for dismissal of the appeal.

10. Heard the learned counsel for the appellant as well as the learned counsel for the respondent and perused the materials available on record.

11. The only question before this Court, in the instant appeal is whether the Tribunal has awarded just and reasonable compensation?

12. The appellant had examined P.W.2/Government Doctor who had stated as follows:



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...

“நான் மேற்கண்ட வழக்கின் மனுதாரர் A.ஆரோக்கியம் கொண்டு வந்த விபத்துக்குண்டான சிகிச்சை ஆவணங்கள், கதிரியக்கப்படங்கள் ஆகியவற்றை ஆராய்ந்தும், தற்பொழுது உள்ள நிலையை அறிய எக்ஸ்ரே எடுத்தும், கடந்த 22.05.2018 தேதியன்று நோழிக மற்றும் ஆய்வுக்கூட பரிசோதனை செய்தும் ஊனச்சான்றிதழ் வழங்கினேன்.

அவருக்கு கடந்த 02.03.2010ல் ஏற்பட்ட சாலை விபத்தில் அவரது வலது முன்கை எலும்பு முறிந்தும், தலையில் பலத்த வெட்டு காயம் ஏற்பட்டு இரத்தம் உறைந்தும் தூத்துக்குடி அரசு மருத்துவமனையில் உள்நோயாளியாக சிகிச்சை பெற்றுள்ளார். மேற்படி காயத்தின் காரணமாக அவரது வலதுகை அசையும் தன்மை பாதித்தமையால் ஏற்பட்ட உபாதைகளையும் தலைக்காயத்தினால் ஏற்பட்ட உபாதைகளையும் கணக்கில் எடுத்துக்கொண்டு, அவரது ஊனத்தை பகுதி நிரந்தரமென 30% என கணித்து நான் வழங்கிய ஊனச்சான்றிதழ் தான் Ex.P6.”

The P.W.2/Doctor had issued a disability certificate which is marked as Ex.P.6, before the Tribunal.



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13. Considering the nature of injuries, P.W.2/Government Doctor had assessed locomotive disability at 30%. There is no contra evidence let in by the respondent to disprove the evidence of P.W.2/Doctor and Ex.P.6/Disability Certificate. There is no basis also for the Tribunal to reduce the percentage of disability from 30% to 10%. The Tribunal in the facts ought to have accepted the disability certificate issued by P.W.2/Doctor, considering the injuries suffered by the appellant. As per the disability certificate, the appellant suffered 30% partial permanent disability. Therefore, this Court is of the view that the appellant is entitled to Rs.3,000/- per percentage of disability for 30% disability. Thus, the compensation awarded under the head Disability is enhanced to Rs.90,000/- (Rs.3,000/- X 30%). The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.65,000/- to Rs.1,25,000/- break-up follows:-



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	30,000/-	90,000/-	Enhanced
2.	Pain and Suffering	15,000/-	15,000/-	Confirmed
3.	Transportation Expenses	5,000/-	5,000/-	Confirmed
4.	Additional Nourishment	10,000/-	10,000/-	Confirmed
5.	Loss of Income	5,000/-	5,000/-	Confirmed
	Total	65,000/-	1,25,000/-	Enhanced by Rs.60,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.65,000/- is hereby enhanced to Rs.1,25,000/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The respondent is directed to deposit the award amount now determined by this Court along with interest and costs less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant is permitted



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to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary

Court Fee, if any, on the enhanced award amount. No Costs.

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Index: Yes/No

Neutral Citation: Yes / No

Copy to:-

- 1.The II Special Sub Judge, Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
VR Section,
High Court,
Madras.



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SUNDER MOHAN, J.

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