

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2017

PRONOUNCED ON : 21.03.2017

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.3263 of 2011

E.Sundar Raj (Minor)
Rep.by his father Esakki Durai .. Appellant / Petitioner

Vs

Tamil Nadu State Express Transport
Corporation Ltd.,
Division-1, Pallavan Salai,
Chennai 600 002
rep.by its Managing Director. ... Respondent / Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No.1989 of 2006, dated 28.02.2011 on the file of the learned IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj
For Respondent : No Appearance

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree dated 28.02.2011 made in M.C.O.P.No.1989 of 2006 on the file of the learned IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2. The minor boy Sundar Raj, who is represented by his father is the appellant/claimant herein, filed a claim petition in M.C.O.P.No.1989 of 2006 before the learned IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai for the injuries sustained by him in a road accident. The Tribunal, after considering the evidence and after hearing the arguments of both sides, awarded a sum of Rs.40,000/- towards compensation to the appellant. Aggrieved against the said award passed by

the Tribunal, the present appeal has been preferred by the appellant seeking enhancement of the compensation.

3. The learned counsel appearing for the appellant/claimant would mainly contend that the Tribunal ought to have fixed the notional income as Rs.15,000/- p.m. for calculating the loss of earning capacity and permanent disability. Further it is contended that the Tribunal could not have reduced the disability from 25% to 15% in the absence of any contra evidence. P.W.5-Doctor had assessed 25% disability, but the tribunal awarded Rs.30,000/- towards disability to the claimant by fixing 15% disability. The learned counsel for the appellant further contended that the Tribunal has awarded a meager sum of Rs.5,000/- towards pain and sufferings, a sum of Rs.1,000/- towards medical expenses, a sum of Rs.2,000/- towards Transport to hospital and a sum of Rs.2,000/- towards extra nourishment. Hence, he prayed for enhancement of compensation.

4. The learned counsel appearing for the respondent-Transport Corporation would contend that the Tribunal, after appreciating the evidence adduced on either side and after considering the evidence adduced by the Doctor, who has given the disability certificate, correctly awarded the compensation and hence, there is no illegality or infirmity or perversity in the order passed by the Tribunal and hence, the order of the Tribunal has to be confirmed and the civil miscellaneous appeal has to be dismissed.

5. Heard both sides and perused the materials available on record.

6. A perusal of the records reveal that the Doctor had assessed 25% disability. But the tribunal had fixed the same at 15% and awarded Rs.30,000/- towards disability. Since the claimant had sustained injury, this Court accepts the disability certificate given by the Doctor. This Court on considering that the claimant had suffered disability at 25%, awards Rs.40,000/- towards 'permanent disability' .

7. That apart, the tribunal awarded Rs.5,000/- towards pain and sufferings which is on the lower side. Hence, this Court hereby enhance the same to Rs.15,000/- towards pain and sufferings, Rs.1,000/- towards medical expenses, Rs.2,000/- towards transportation and Rs.2,000/- towards extra nourishment, which sums appear just and reasonable and therefore, they are hereby confirmed. The compensation is reassessed as follows:

Permanent disability	Rs.40,000/-
Pain and sufferings	Rs.15,000/-
Medical expenses	Rs. 1,000/-
Extra Nourishment	Rs. 2,000/-
Transportation	Rs. 2,000/-
Total	Rs.60,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal of Rs.40,000/- is hereby enhanced to Rs.60,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

9. The respondent-Transport Corporation is directed to deposit the amount with interest now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, The appellant/claimant is entitled to the entire enhanced award amount with accrued interest as awarded by the Tribunal and he is entitled to withdraw the same at the time of attaining majority, on due application, after adjusting the amount, if any, already withdrawn. The appellant is directed to pay necessary court fee for the enhanced amount. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

kkd

To

The IV Judge, Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.

+1CC to Mr.A.Shanmugaraj, Advocate Sr.No.22131

C.M.A.No.3263 of 2011

AD(CO)
RS(05.05.2017)