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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1790 of 2011

&

C.M.P.No.4387 of 2018

Y.Cliff Richard

.. Appellant/Petitioner

..Vs..

Metropolitan Transport Corporation,
Pallavan Salai, Pallavan House,
Chennai - 600 002.

..Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.07.2010 and made in MCOP.No.105 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Judge, Fast Track Court No.II, Poonamallee.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.S.S.Swaminathan

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 28.07.2010 passed by the Motor Accident Claims Tribunal (Additional District & Sessions Judge, Fast Track Court No.II, Poonamallee) in MCOP.No.105 of 2008.

The brief facts leading to the filing of the instant appeal are as follows:

2. The Appellant sustained injuries as a result of an accident that took place on 02.01.2008 caused by a bus bearing registration No. TN01/3241 owned by the respondent Transport Corporation. The Appellant preferred a claim before the Motor Accident Claims Tribunal seeking a compensation of Rs.8,03,000/-. The Motor Accident Claims Tribunal by its Award dated 28.07.2010 in MCOP.No.105 of 2008 directed the respondent to pay the Appellant a sum of Rs.3,63,900/- together with



interest at the rate of 7.5 % per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned Award, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard, Mr.C.Prabakaran, learned counsel for the Appellant and Mr.S.S.Swaminathan, learned counsel for the respondent.

5. According to the learned counsel for the Appellant, the compensation awarded to the Appellant under the impugned Award is an inadequate compensation. According to him, even though the Appellant suffered 60% disability, as seen from Ex.P11, the Tribunal without any basis, has assessed the disability at 50%. The learned counsel for the Appellant would further contend that considering the year of the accident and the avocation of the Appellant, at the time of the accident, the Tribunal ought to have awarded a higher compensation towards the disability suffered by the Appellant. According to the learned counsel for the Appellant, the compensation assessed towards permanent disability to the Appellant at Rs.75,000/- for 50% disability calculated at the rate of Rs.1,500/- per percentage of disability by the Tribunal is an inadequate compensation. The learned counsel for the Appellant would further contend that the compensation awarded by the Tribunal under various heads is also an inadequate compensation.

6. Per contra, learned counsel for the respondent Transport Corporation would submit that the compensation awarded to the Appellant under the impugned Award is a just compensation. According to the learned counsel for the respondent, the Appellant was only a student aged 20 years at the time of the accident and only sustained left hand bone fracture and right hand and leg bones fracture as a result of the accident and the Tribunal has rightly assessed the disability of the Appellant at 50%.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) The nature of injuries sustained by the Appellant as a result of the accident has not been disputed by the respondent before the Tribunal.

b) The Appellant has sustained left hand bone fracture and right hand and leg bones fracture and he was hospitalised from 02.01.2008 to 16.01.2008, from 13.06.2008 to 20.06.2008 and from



15.06.2009 to 22.06.2009 and he had to undergo two surgeries. These facts have also not been disputed by the respondent before the Tribunal.

c) The Discharge summaries from the hospital were also marked as Exs.P2, P4 & P6, before the Tribunal. No contra evidence has been produced by the respondent before the Tribunal to disprove the nature of injuries sustained by the Appellant as well as the period of his hospitalisation. If the Appellant did not sustain grievous injuries, he would not have been hospitalised for long periods and further, he has also underwent two surgeries.

d) The Appellant had produced a Disability Certificate, which was marked as Ex.P11, which disclosed that the disability of the Appellant is 60% and PW2, a Doctor was also examined as witness by the Appellant. Without any basis, the Tribunal has assessed the disability of the Appellant at 50%, which in the considered view of this Court is not correct. Considering the nature of injuries sustained by the Appellant and the long period of hospitalisation, the Tribunal ought to have accepted the Disability Certificate Ex.P11, which has assessed the disability of the Appellant at 60%. Further, considering the nature of injuries sustained by the Appellant and the year of the accident, the quantum of compensation awarded by the Tribunal towards permanent disability is low. In the considered view of this Court, the Tribunal ought to have accepted the Disability Certificate and assessed the disability at 60 % and should have calculated the compensation at the rate of Rs.2,000/- per percentage of disability.

e) This Court is of the considered view that the compensation awarded by the Tribunal towards Pain and Suffering and Extra Nourishment charges is also low. It has to be enhanced from Rs.20,000/- to Rs.30,000/- towards Pain and Suffering and from Rs.5,000/- to Rs.10,000/- towards Extra Nourishment Charges. Considering the nature of injuries sustained by the Appellant, this Court is of the considered view that the Tribunal ought to have awarded compensation towards Loss of amenities and this Court assesses the same at Rs.10,000/-

f) Insofar as other heads of compensation awarded by the Tribunal are concerned, this Court is not disturbing the same as they are adequate.

8. In the light of the above observations, this Court is of the considered view that the award passed by the Tribunal has to be enhanced in the following manner:



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Heads	Amount Awarded by the Tribunal	Modified Amount
Compensation for permanent disability	Rs.75,000/-	Rs.1,20,000/-
Pain and Suffering	Rs.20,000/-	Rs.30,000/-
Transport	Rs.10,000/-	Rs.10,000/-
Extra Nourishment	Rs.5,000/-	Rs.10,000/-
Attender Charges	Rs.15,000/-	Rs.15,000/-
Medical Expenses	Rs.2,38,900/-	Rs.2,38,900/-
Loss of Amenities	Nil	Rs.10,000/-
Total	Rs.3,63,900	Rs.4,33,900/-

9. In the result, the award passed by the Tribunal is modified by enhancing the Award amount from Rs.3,63,900/- to Rs.4,33,900/- and the respondent is directed to pay the Appellant a sum of Rs.4,33,900/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, after deducting the amount already deposited, to the credit of MCOP.No.105 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Judge, Fast Track Court No.II, Poonamallee, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant is permitted to withdraw the amount lying to the credit of MCOP.No.105 of 2008 along with accrued interest by filing an appropriate application.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed without costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Additional District & Sessions Judge,
Fast Track Court No.II, Poonamallee.



2. The Record Clerk,
VR Section, High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.72335

+1cc to Mr.C.Prabakaran, Advocate SR.No.72096

C.M.A.No.1790 of 2011 &
C.M.P.No.4387 of 2018

RJ (CO)

GMV (22/11/2018)