

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2058 of 2015

M.Rajan .. Appellant / Petitioner

Vs.

Metropolitan Transport Corporation Ltd.,
(Chennai Division)
Represented by its Managing Director
Pallavan salai
Chennai-2. .. Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.04.2015 made in M.A.C.T.O.P.No.4426 of 2010 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Chennai.

For Appellant : Mr.N.M.Muthurajan

For Respondent : Mr.S.S.Swaminathan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 13.04.2015 made in M.A.C.T.O.P.No.4426 of 2010 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Chennai.

2.The appellant is claimant in M.A.C.T.O.P.No.4426 of 2010 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Chennai. He filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.10.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent to pay a sum of Rs.2,60,000/- as compensation to the appellant.

4. Not being satisfied with the award amount granted by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that P.W.2/Doctor, who issued Ex.P7/disability certificate, deposed that the appellant has suffered partial permanent disability at 50%. The Tribunal has not accepted the evidence of P.W.2 and committed error in reducing the same to 30%. The appellant was a painter and was earning a sum of Rs.350/- per day and the Tribunal failed to fix the notional income of the appellant at Rs.6,500/- per month. The painters are nowadays getting a sum of Rs.850/- per day. The appellant was out of employment for ten months and the Tribunal was not correct in awarding only two months salary of the appellant for loss of income. The Tribunal has not awarded any amount towards loss of earning power and the appellant is entitled to get Rs.1,18,000/- under this head. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per Contra, the learned counsel appearing for the respondent/ Transport Corporation contended that the Tribunal has given valid reason for reducing the percentage of disability from 50% to 30%. The appellant has not proved his out of employment and that he was not able to earn, as he was doing earlier. The amounts awarded by the Tribunal are not meagre and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that P.W.2/Doctor has assessed the disability of the appellant at 50%. The Tribunal took note of the fact that P.W.2/Doctor is neither a Neuro Surgeon nor an Orthopaedic Surgeon and he has not given any treatment to the appellant. Considering Ex.P3/discharge summary, wherein it is stated that conservative treatment alone was given to the appellant for his injuries and admission of P.W.2 that the contusion was resolved on treatment even at the time of taking treatment, the Tribunal has awarded a sum of Rs.90,000/- towards 30% partial permanent disability at the rate of Rs.3,000/- per percentage. The Tribunal has given cogent and valid reason for the same and there is no error in the said reasoning. The amounts awarded by the Tribunal under the heads of attendant benefits and extra nourishment are meagre and the same are hereby enhanced from Rs.5,000/- to Rs.10,000/- and Rs.7,000/- to Rs.20,000/- respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and

the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For 30% partial and permanent disability at the rate of Rs.3,000/- per percent	90,000	90,000	confirmed
2.	Pain and suffering	50,000	50,000	confirmed
3.	Transportation	10,000	10,000	confirmed
4.	Extra nourishment	7,000	20,000	enhanced
5.	Attendant charges	5,000	10,000	enhanced
6.	Loss of income for two months	13,000	13,000	confirmed
7.	Loss of future prospects	50,000	50,000	confirmed
8.	Loss of amenities	35,000	35,000	confirmed
9.	Total	2,60,000	2,78,000	Enhanced by Rs.18,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,60,000/- is hereby enhanced to Rs.2,78,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The respondent/Transport Corporation is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if

any, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
Special Sub Judge, Chennai.

copy to: The Section Officer,
VR Section,
High Court, Madras. (2 copies)

+1 cc to Mr.S.S.Swaminathan, Advocate, SR No.77135

+1 cc to Mr.N.M.Muthurajan, Advocate, SR No.77465

+1 cc to Mr.N.M.Muthurajan, Advocate, SR No.77465 (23/01/2018)

C.M.A.No.2058 of 2015

VG-II (co)
ssm (27/12/2018)