

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2387 of 2015

M.Velu

.. Appellant/Claimant

Vs.

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division III,
Kancheepuram District. ... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.07.2011 made in M.C.O.P.No.952 of 2006 on the file of the Motor Accident Claims Tribunal/II Small Causes Court, Chennai.

For Appellant : M/s.Ramya V. Rao

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 15.07.2011 in M.C.O.P.No.952 of 2006 on the file of the Motor Accidents Claims Tribunal /II Small Causes Court, Chennai.

2.The appellant is claimant in M.A.C.T.O.P.No.952 of 2006 on the file of the Motor Accidents Claims Tribunal / II Court of Small Causes, Chennai. He filed the above claim petition claiming a sum of Rs.2,50,000/- as compensation for the injuries sustained by him in the accident that took place on 27.11.2005.

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/Transport Corporation and directed the respondent to pay a sum of Rs.1,37,600/- 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/claimant contended that the Tribunal ought to have applied multiplier method to arrive at loss of income suffered by the appellant. P.W.2/Doctor has deposed the nature of injuries sustained by the appellant and he issued Ex.P6/disability certificate stating that appellant suffered 40% disability. But the Tribunal fixed only 14% disability. The Tribunal ought to have accepted the evidence of P.W.2/Doctor, who is an expert and awarded more compensation under the head of disability. The amounts awarded by the Tribunal under different heads are meager and hence prayed for enhancement of compensation.

6. Per Contra, Mr.K.J.Sivakumar, the learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal has considered the evidence of P.W.2/Doctor and disability certificate produced by the appellant in proper perspective and awarded compensation by applying multiplier method. There is no reason to enhance the compensation 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 given disability certificate and also deposed the nature of the injuries suffered by the appellant with regard to particular part of the body. The Tribunal converting the percentage of disability for the whole body, fixed the same at 14% and applying multiplier 15 as per the judgment of the Honourable Apex Court reported in 2009 ACC 708 (SC) (Sarla Verma and others v. Delhi Transport Corporation and another) and fixing the monthly income of the appellant at Rs.3,000/-, awarded a sum of Rs.75,600/- ($3000 \times 12 \times 15 \times 14\%$) towards loss of earning power and capacity. In addition to that, the Tribunal has awarded compensation at the rate of Rs.2,000/- per percentage and granted a sum of Rs.28,000/- ($\text{Rs.2,000/-} \times 14\%$) towards permanent disability. In view of the same, the amount awarded by the Tribunal towards disability suffered by the appellant is proper. The Tribunal has awarded a sum of Rs.9,000/- ($\text{Rs.3,000/-} \times 3$) towards loss of income during treatment period at the rate of Rs.3,000/- per month for three months. The appellant has taken treatment in two different hospitals from 27.11.2005 to 03.12.2005 and from 11.07.2006 to 30.08.2006 as in-patient and filed Ex.P4/discharge summary. The accident took place on 27.11.2005. In view of the same, the appellant is entitled to

loss of income during and after the treatment period for 12 months at the rate of Rs.3,000/- per month and awarded a sum of Rs.36,000/- (Rs.3,000/- X 12) towards loss of income during and after the treatment period. Therefore, the sum of Rs.9,000/- awarded by the Tribunal towards loss of earning during treatment period is hereby set aside. The Tribunal has awarded only a sum of Rs.2,000/- towards extra nourishment and hence the same is enhanced to Rs.5,000/-. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. Hence, a sum of Rs.5,000/- each is granted towards attendant charges and loss of amenities. The amounts awarded under all the 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.	Loss of earning power/capacity	75,600	75,600	confirmed
2.	Permanent disability	28,000	28,000	confirmed
3.	Loss of earning during treatment period	9,000	-	set aside
4.	Transportation	1,000	1,000	confirmed
5.	Extra nourishment	2,000	5,000	enhanced
6.	Damage to clothes and articles	1,000	1,000	confirmed
7.	Medical expenses	1,000	1,000	confirmed
8.	Pain and suffering	20,000	20,000	confirmed
9.	Attendant charges	-	5,000	awarded
10.	Loss of amenities	-	5,000	awarded

11.	Loss of income during and after the treatment period	-	36,000	Awarded
	Total	1,37,600	1,77,600	Enhanced by Rs.40,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,37,600/- is hereby enhanced to Rs.1,77,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period in filing the appeal. The respondent/Transport Corporation is directed to deposit the enhanced award amount along 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 judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judge, Motor Accident Claims Tribunal/
II Small Causes Court, Chennai.

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

+1 cc to Mr.K.J.Sivakumar, Advocate Sr.No.80380

C.M.A.No.2387 of 2015

KJI (CO)
CSL/09.01.2019