

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.600 of 2016

V.Dharman

... Appellant/Petitioner

Vs

Metropolitan Transport Corporation Ltd.,
rep. by its Managing Director,
Pallavan Salai,
Chennai-600 002. ... Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 11.06.2014 passed in M.C.O.P.No.5249 of 2011 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.A.Shanmugaraj
For Respondent : Mr.S.V.Vasantha Kumar

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.1,86,000/- awarded by the Tribunal for the injuries sustained by him in the accident, the appellant has preferred the Civil Miscellaneous Appeal seeking enhancement of compensation.

2. The appellant is the claimant and he filed the claim petition under Section 163-A of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the accident occurred on 05.11.2010.

3. I heard Mr.A.Shanmugaraj, learned counsel for the appellant and Mr.S.V.Vasanthakumar, learned counsel for the respondent.

4. It is not necessary for this Court to narrate entire facts in detail qua accident. It is for the reasons recorded by the Tribunal that since the claim petition filed by the appellant under Section 163-A of the Act, the negligence need not be proved.

5. In the present case, the appellant has only challenged the percentage of disability taken by the Tribunal and also the amount awarded by the Tribunal towards medical expenses.

6. The learned counsel for the appellant contended that though P.W.3-Doctor assessed the disability at 60%, the Tribunal has taken the disability at 25% and considering the injuries sustained by the appellant, the Tribunal ought to have fixed the loss of earning capacity as 100%. He would further submit that the Tribunal failed to note that the annual income of Rs.40,000/- fixed in the Second Schedule of M.V. Act read with under Section 163-A of the Act in the year of 1994 and same income cannot be taken into account after elapse of 20 years and it ought to have fixed the monthly income of the appellant at Rs.6,000/- and awarded more amount.

7. Per contra, reiterating the findings of the Tribunal in respect of quantum, the learned counsel for the respondent submitted that the total compensation of Rs.1,86,000/- awarded by the Tribunal is just and reasonable and there is no need to enhance the same.

8. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

9. There is no dispute that in the accident, the appellant had sustained fracture of left orbital; fracture of fore arm below elbow; fracture of left femur; cut injury in left side eye and also multiple injuries all over the body. Immediately after the accident, the appellant had taken treatment at Government General Hospital, Chennai and thereafter, he had taken treatment privately.

10. P.W.2-Dr.Saichandran, examined the appellant after the accident and assessed partial and permanent disability at 60%. Ex.P12 is the disability certified issued by him. However, the Tribunal has taken the disability at 25%, for which, the Tribunal has not assigned any reason. Considering the injuries sustained by the appellant, the Tribunal erred in taking the disability at 25%. Having regard to the nature of injuries sustained and also still the appellant can walk only with the support of stick and also the bones united with wide manner of loss of grip and his left wrist movements reduced and restricted to 30 degrees, it would be appropriate to take the disability at 45%.

11. The appellant claimed that he was earning Rs.15,000/- per month. Since the appellant filed the claim petition under

Section 163-A of the Motor Vehicles Act and in view of the settled law, his income is to be taken as Rs.40,000/-, which the Tribunal has rightly taken. At the time of accident, the appellant was aged 46 years and for the age group 45 - 50, the multiplier to be adopted is 13. Thus, this Court is inclined to award Rs.2,34,000/- (Rs.40,000 x 13 x 45%) towards disability as against Rs.1,30,000/- awarded by the Tribunal.

12. The Tribunal awarded Rs.15,000/- towards medical bills. Pending appeal, the appellant had filed C.M.P.No.2384 of 2018 seeking to receive certain documents, which include the medical bills for Rs.61,044/- as an additional documents and the said petition was allowed by this Court by a separate order. On a perusal of the medical bills now produced by the appellant, it is seen that the appellant had incurred a sum of Rs.61,044/- towards medical expenses. The respondent has not denied the same. Therefore, this Court is inclined to award Rs.61,044/- towards medical expenses as against Rs.15,000/- awarded by the Tribunal.

13. The Tribunal awarded Rs.36,000/- towards loss of income and Rs.5,000/- towards pain and suffering. Considering the nature of injuries and also the period of treatment undergone by the appellant, the amounts awarded by the Tribunal under the heads loss of income and pain and suffering are maintained. Thus, the total compensation of Rs.1,86,000/- awarded by the Tribunal is enhanced to Rs.3,36,100/- as under:

Disability	:	Rs.2,34,000.00
Medical expenses	:	Rs. 61,044.00
Loss of income	:	Rs. 36,000.00
Pain and suffering	:	Rs. 5,000.00
Total	:	Rs.3,36,044.00

Rounded off to : Rs.3,36,100.00

14. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.1,86,000/- awarded by the Tribunal is enhanced to Rs.3,36,100/- payable with interest at the rate of 7.5% per annum from the date of numbering of the claim petition i.e., 09.12.2011 till the date of deposit. The respondent is directed to deposit the modified compensation with interest as aforesaid before the Tribunal within a period of eight weeks from the date

of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount with accrued interest on filing proper application before the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
III Small Causes Court,
Chennai.

Copy TO

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

+1cc to Mr.A.Shankugaraj, Advocate, S.R.No. 70643

+1cc to Mr.S.V.Vasantha Kumar, Advocate, S.R.No. 70352

C.M.A.No.600 of 2016

RJI (CO)
GN(20/03/2019)

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