

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No. 1428 of 2010

G. Baskar

...Appellant/Petitioner

Vs

Metropolitan Transport Corporation (Chennai),
Ltd., rep.by its Managing Director,
Pallavan salai,
Chennai-600 002.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 06-11-2009 made in MACT O.P.No.3221 of 2005 on the file of the learned II Judge, Motor Accident Claims Tribunal, (Court of Small causes), Chennai.

For Appellant : Mrs.T.Salim Fathiam

For Respondent : Mr.S.V.Vasanthakumar

JUDGMENT

The instant appeal has been filed by the claimant challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Court of Small Causes), Chennai, in its award dated 06.11.2009 in M.C.O.P.No.3221 of 2005.

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

(i) The appellant sustained injuries, as a result of an accident caused by a bus bearing Registration No. TN-01-N-3196, owned by the respondent Transport Corporation. The appellant preferred a claim before the Motor Accidents Claims Tribunal (II Small Causes Court), Chennai in M.C.O.P.No.3221/2005, seeking compensation of Rs.11,00,000/-.

(ii) The Motor Accidents Claims Tribunal (II Small Causes Court), Chennai by its award dated 06.11.2009 passed in M.C.O.P.No.3221 of 2005, directed the respondent Transport Corporation to pay the appellant a sum of Rs.2,75,200/- together with interest of 7.5% per annum from the date of claim till the

date of realization and also awarded the costs.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the claimant has filed this instant appeal seeking enhancement of compensation.

4. Heard Mrs.T.Salim Fathiam, learned counsel for the appellant and Mr.S.V.Vasantha Kumar, learned counsel for the respondent Transport Corporation.

5. According to the learned counsel for the appellant, the compensation awarded by the Tribunal is not commensurate with the actual loss suffered by the appellant, as a result of the injuries caused to him, on account of the accident. The appellant was 19 years old and he was doing BE degree in second year at Hindustan Engineering College, Padur, Kelambakkam, kancheepuram District, Chennai.

6. According to her, the appellant sustained fracture on both bones on the right leg and multiple injuries all over the body as a result of the accident. According to her due to the injuries, the appellant suffered loss of future prospects. According to her, the Tribunal has not adequately compensated the appellant under the various heads. According to her, the compensation awarded towards "pain and suffering" and "permanent disability" is very meagre. Further no compensation was awarded by the Tribunal towards "loss of earning power". According to her, even though the appellant had made a claim for Rs.11,00,000/- the Tribunal awarded only a sum of Rs.2,75,200/- as compensation to the appellant.

7. Per contra, the learned counsel for the respondent Transport Corporation submitted that the injuries sustained by the appellant will not have any impact on his future prospects. Further according to the learned counsel for the respondent, the appellant was only a student and hence the Tribunal has rightly rejected the claim made by him towards loss of earning capacity. Therefore, the learned counsel for the respondent submitted that the award passed by the Tribunal is fair, just and reasonable and the same does not require any interference from this Court.

8. 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 age and the injuries sustained by the appellant have not been disputed by the respondent Transport Corporation before the Tribunal.

b. The Tribunal has given a clear finding in the impugned award that only due to the rash and negligence driving by the

driver of the bus owned by the respondent Transport Corporation, the accident had happened, resulting in grievous injuries to the appellant.

c. The Appellant had produced a disability certificate disclosing the disability at 20%, which was marked as Ex.P.7. The Tribunal has granted only a sum of Rs.20,000/- towards disability compensation. Considering the year of the accident, which took place in 2005, this Court is of the considered view that the compensation awarded under the head "permanent disability" must be enhanced to Rs.40,000/- from Rs.20,000/- calculated at the rate of Rs.2000/- per percentage of disability.

d. No evidence has been adduced by the appellant before the Tribunal to establish that as a result of the injuries sustained by him, he has lost his earning capacity and loss of future prospects.

e. Except for enhancing the compensation towards disability by another a sum of Rs.20,000/-, the appellant has not made out any case for further enhancement. Hence, the compensation awarded by the Tribunal under the other heads remain unaltered.

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

Head	Amount awarded by the Tribunal	Modified Amount
Transport Expenses	Rs. 3,000/-	Rs.3,000/-
Extra Nourishment expenses	Rs.20,000/-	Rs.20,000/-
Dress materials	Rs.1,000/-	Rs.1,000/-
Medical expenses	Rs.1,200/-	Rs.1,200/-
Petitioner's inability to participate in sports and games	Rs.1,50,000/-	Rs.1,50,000/-
Pain and suffering loss of income to the family members to attending the petitioner	Rs.50,000/-	Rs.50,000/-
Additional transport expenses due to petitioner's inability to ride two wheelers and travel by city bus	Rs.20,000/-	Rs.20,000/-
Pain and sufferings	Rs.10,000/-	Rs.10,000/-
Permanent disability	Rs.20,000/-	Rs.40,000/-
Total compensation	Rs.2,75,200/-	Rs.2,95,200/-

10. Accordingly, the compensation awarded by the Tribunal in the impugned award is enhanced to Rs.2,95,200/- from Rs.2,75,200/-. The respondent is directed to deposit the enhanced amount together with interest at 7.5% per annum from the date of claim till date of realization, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the said amount with accrued interest by filing an appropriate application.

11. In the result, the Civil Miscellaneous Appeal is partly allowed with the above terms. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

tta/rts

To

1. The Motor Accident Claims Tribunal,
II Judge, Court of Small Causes, Chennai
2. The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.S.V.Vasanthakumar, Advocate SR.No.62321

+1cc to Mr.M.Swamikkannu, Advocate SR.No.62375

सत्यमेव जयते

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GMV (23/10/2018)

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