

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2823 of 2018

Bakayaraj

.. Appellant /Claimant

Vs.

The Managing Director,
Tamil Nadu State Express Transport Corporation Limited,
Chennai - 600 002.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.04.2016 made in M.A.C.T.O.P.No.2426 of 2012 on the file of the Motor Accidents Claims Tribunal, II Special Court, Court of Small Causes, Chennai.

For Appellant : Ms.M.Malar

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation awarded by the Tribunal by award dated 18.04.2016 made in M.C.O.P.No.2426 of 2012 on the file of the Motor Accidents Claims Tribunal, II Special Judge, Court of Small Causes, Chennai.

2. Mr.K.J.Sivakumar, learned counsel takes notice for the respondent and by consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3. The appellant is the claimant in M.C.O.P.No.2426 of 2012 on the file of the Motor Accidents Claims Tribunal, II Special Court, Court of Small Causes, Chennai. He filed the above claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.11.2010.

4. 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/Transport Corporation to pay a sum of Rs.3,53,000/- as compensation to the appellant.

5. Not being satisfied with the award amount granted by the Tribunal, the appellant has come out with the present appeal

evidence of P.W.2/Doctor has reduced the percentage of disability to 60% and the reasons given by the Tribunal for reducing the same is erroneous. The Tribunal ought to have applied multiplier method to award compensation for loss of earning capacity at 100%. Due to the injuries sustained by the appellant, he could not continue his work which he was doing earlier and the amounts awarded by the Tribunal are very meager. The appellant was earning a sum of Rs.1,500/- per day. However, the Tribunal erred in fixing notional income of the appellant at Rs.6,500/- per month which is very meager. The amounts awarded by the Tribunal under different heads are very low and prayed for enhancement of compensation.

7. Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the respondent contended that in the absence of any evidence with regard to income of the appellant, the Tribunal has fixed notional income of the appellant at Rs.6,500/- per month. The said amount is excessive and the Tribunal has given valid reason for reducing the percentage of disability. The appellant has not proved by any acceptable evidence that he could not do any work as he was doing earlier and he suffered 100% loss of earning capacity. Based on the evidence let in by the appellant, the Tribunal awarded excessive compensation under different heads and prayed for dismissal of the appeal.

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

9. The appellant has examined himself as P.W.1 and deposed about the nature of injuries and disability sustained by him in the accident. In addition to that, the appellant has examined P.W.2/Doctor, who certified the disability under three different heads, totaling to 75%. The Tribunal reduced the said percentage of disability by 5% in each category. According to the Tribunal, the nature of injuries sustained by the appellant is not as per the injuries defined in Workmen Compensation Act and therefore the Tribunal has reduced the percentage of disability, as stated above. The said reason is erroneous and appellant is entitled to compensation for 75% of disability at the rate of Rs.3,000/- per percentage of disability. (Rs.3,000 x 75 = Rs.2,25,000/-). The appellant has not proved that he suffered functional disability or that he was totally immobilized. Hence, the appellant is not entitled for compensation towards loss of earning capacity by applying multiplier method for permanent disability. The amounts awarded by the Tribunal under different heads are just compensation and there is no reason to modify the same. 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.	Disability	1,80,000/-	2,25,000/-	enhanced
2.	Pain and suffering	40,000/-	40,000/-	confirmed
3.	Loss of Income	26,000/-	26,000/-	confirmed

6.	Damages to Clothes and death of bullocks	80,000/-	80,000/-	confirmed
7.	Attender Charges	5,000/-	5,000/-	confirmed
8.	Funeral Expenses to bullocks	2,000/-	2,000/-	confirmed
	Total	3,53,000/-	3,98,000/-	Enhanced by Rs.45,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.3,98,000/- with interest and costs. The respondent/Transport Corporation is directed to deposit the enhanced award amount, along with interest and costs, 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/claimant is permitted to withdraw the award amount alongwith with accrued interest and costs, after adjusting the amount, if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

krk

To

The II Special Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai.

+1cc to Mr.M.Malar, Advocate, S.R.No. 84592
+1cc to Mr.K.J.Siva Kumar, Advocate, S.R.No.84544

C.M.A.No.2823 of 2018