

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2056 of 2015 and 3067 of 2018
and C.M.P.No.23247 of 2018 in C.M.A.No.3067 of 2018

1.N.Hemnath .. Appellant in C.M.A.No.2056 of 2015/Petitioner
... Respondent in C.M.A.No.3067 of 2018

Vs.

1.The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan House, Anna Salai,
Chennai - 600 002. .. Respondent in C.M.A.No.2056 of 2015
and Appellant in C.M.A.No.3067/2018.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.10.2013 made in M.C.O.P.No.2909 of 2011 on the file of Motor Accidents Claims Tribunal, Small Causes Court - V, Chennai.

For Appellants : Ms.A.Subadra for
M/s.M.Malar (in C.M.A.No.2056 of 2015)
Mr.K.S.Suresh (in C.M.A.No.3067 of 2018)

For Respondents: Mr.K.S.Suresh (in C.M.A.No.2056 of 2015)
Ms.A.Subadra for
Ms.M.Malar (in C.M.A.No.3067 of 2018)

C O M M O N J U D G M E N T

C.M.A.No.2056 of 2015 is filed by the claimant for enhancement of compensation of the award dated 30.10.2013 made in M.C.O.P.No.2909 of 2011 on the file of Motor Accidents Claims Tribunal, Small Causes Court - V, Chennai. C.M.A.No.3067 of 2018 is filed by the Transport Corporation for setting aside the award dated 30.10.2013 made in M.C.O.P.No.2909 of 2011 on the file of Motor Accidents Claims Tribunal, Small Causes Court - V, Chennai.

2.Both the Civil Miscellaneous Appeals are arising out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the

claim petition. The claimant filed the above said 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 02.07.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and awarded a sum of Rs.9,35,000/- as compensation to the claimant.

4.The learned counsel appearing for the claimant contended that two doctors examined as P.W.2 and P.W.3 have assessed the disability and documents were marked through them to prove the nature of injuries and disability sustained by the claimant. The Tribunal erred in reducing the disability at 40% and awarded a sum of Rs.9,35,300/-instead of Rs.10,00,000/-. The claimant was 19 years old at the time of accident and lost 100% of earning capacity. The Tribunal erred in fixing notional income of the claimant at Rs.5,000/- per month and did not award any enhancement towards future prospects. The claimant was treated as in-patient from 02.07.2011 to 09.07.2011 and from 09.08.2011 to 10.08.2011. The claimant was taking treatment as out-patient till 22.09.2011. The Tribunal ought to have fixed loss of earning capacity at 100% instead of 40% and awarded compensation as claimed by the claimant. The learned counsel appearing for the claimant further contended that the amounts awarded by the Tribunal under different heads are very meager and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the accident occurred only due to rash and negligent driving by claimant and the Tribunal failed to properly appreciate the evidence of R.W.1/driver of the bus in proper perspective. The claimant did not have driving license at the time of accident. The Tribunal erred in adopting multiplier method and awarding a sum of Rs.4,32,000/- for loss of earning power, which is excessive. A sum of Rs.1,00,000/- and Rs.50,000/- awarded under the heads of pain and suffering and loss of expectation of life and the amounts awarded towards loss of marital prospects and loss of amenities are excessive. The claimant was first year B.B.A. student. He did not have any independent income and the amounts awarded by the Tribunal towards loss of earning capacity is highly excessive and prayed for reducing the amount awarded by the Tribunal.

6.Heard the learned counsel appearing for the claimant as well as the respondent and perused all the materials available on record.

7. From the materials on record it is seen that the contention of the respondent-Transport Corporation is that accident occurred only due to negligent driving by the claimant. To prove the said contention, the respondent examined the driver of the bus as R.W.1 who deposed as claimed by the respondent. Ex.P1/F.I.R is registered only against the driver of the bus. The Tribunal took note of the fact that R.W.1-driver of the bus did not give any complaint to the police that accident occurred only due to the negligence on the part of the claimant. The Tribunal considering the evidence of claimant as P.W.1 and Ex.P1/F.I.R, held that accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation. I do not find any error in the said finding of the Tribunal.

8. As far as quantum of compensation is concerned, P.W.2 and P.W.3, Doctors have assessed and certified the disability sustained by the claimant at 60% and 25% respectively. The Tribunal considering the evidence of P.W.2, P.W.3 and Ex.P17/disability certificate and based on the oral and documentary evidence, assessed the disability at 40% and applying multiplier method awarded compensation. The Tribunal considering the fact that claimant was first year B.B.A student and his prospects of getting good job is diminished due to the nature of injuries sustained by the claimant, has adopted multiplier method to arrive at loss of income. The Tribunal fixed notional income of the claimant at Rs.5,000/- per month and applied multiplier '18', since the claimant was aged 19 years. A sum of Rs.4,32,000/- awarded by the tribunal towards loss of earning capacity is just compensation. The contention of the learned counsel appearing for the claimant that the claimant sustained 100% loss of earning capacity is not supported by any acceptable evidence. The contention of the learned counsel for the respondent-Transport Corporation that the Tribunal has awarded excessive amounts towards loss of amenities, pain and suffering has considerable force. The Tribunal has awarded a sum of Rs.1,00,000/- each towards loss of amenities and pain and suffering and the same are hereby reduced to Rs.75,000/- each. The Tribunal has awarded a sum of Rs.5,000/- towards extra nourishment and the same is very meager. Considering the nature of injuries and disability sustained by the claimant, the claimant is entitled for a sum of Rs. 20,000/- towards extra nourishment. The Tribunal considered the evidence of Ex.P10/Medical Bills and has awarded a sum of Rs.1,82,283/- towards medical bills. The Tribunal has awarded a sum of Rs.5,000/- towards attender charges, Rs.1,000/- towards damage to clothes, Rs.10,000/- towards transportation, Rs.50,000/- towards loss of marital prospects and Rs.50,000/- towards loss of expectation of life which are not excessive and are

confirmed. Thus, the amounts 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.	Transportation	10,000/-	10,000/-	confirmed
2.	Extra Nourishment	5,000/-	20,000/-	enhanced
3.	Damage to Clothes	1,000/-	1,000/-	confirmed
4.	Medical Expenses	1,82,283/-	1,82,283/-	confirmed
5.	Attender Charges	5,000/-	5,000/-	confirmed
6.	Pain and Suffering	1,00,000/-	75,000/-	reduced
7.	Loss of Amenities	1,00,000/-	75,000/-	reduced
8.	Loss of Marital Prospects	50,000/-	50,000/-	confirmed
9.	Loss of Expectation of Life	50,000/-	50,000/-	confirmed
10.	Loss of Earning Capacity	4,32,000/-	4,32,000/-	confirmed
	Total	Rs.9,35,283/- rounded off to Rs.9,35,300/-	Rs.9,00,283/-	reduced by Rs.35,000/- rounded off to Rs.9,00,300/-

9. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.9,35,300/- is hereby reduced to Rs.9,00,300/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The respondent-Transport Corporation is directed to deposit the modified award amount now determined by this Court 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 judgment. On

such deposit, the claimant is permitted to withdraw the modified award amount along with interest and cost, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

krk/vs

To

1.The V Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

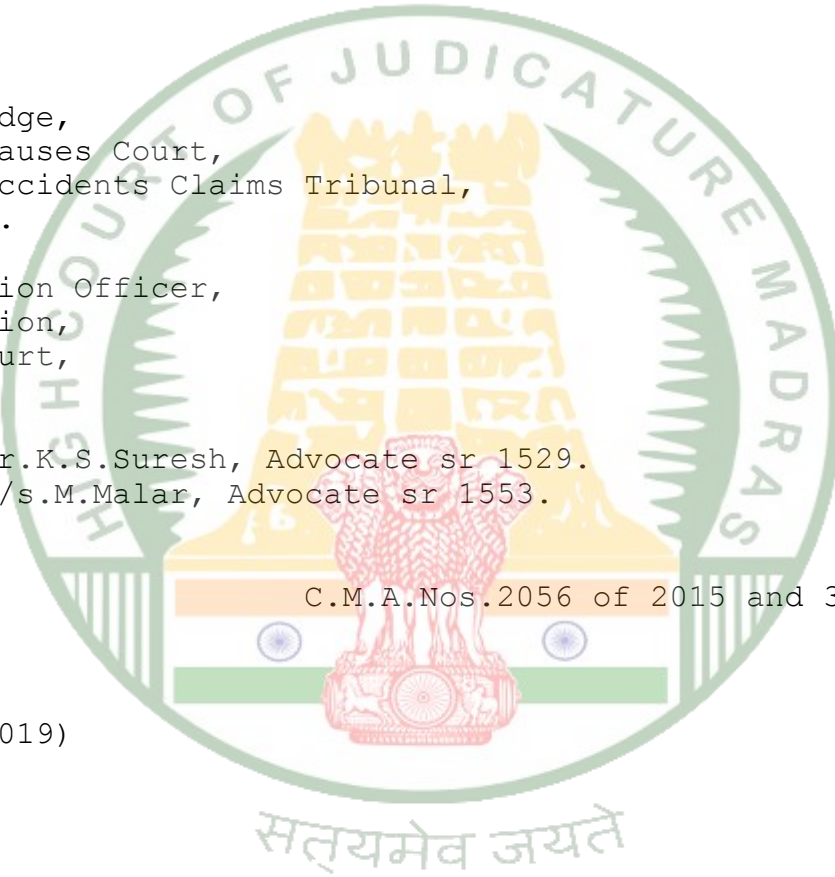
2.The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.K.S.Suresh, Advocate sr 1529.

+1 CC to M/s.M.Malar, Advocate sr 1553.

C.M.A.Nos.2056 of 2015 and 3067 of 2018

RV(CO)
SP(03/06/2019)



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