

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2102 of 2015

P.Duraisamy

.. Appellant/Claimant

Vs.

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Vellore Division - I, Vellore.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2015 made in M.C.O.P.No.193 of 2004 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Cuddalore.

For Appellant : Mr.D.S.Thirumavalavan

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 27.04.2015 made in M.C.O.P.No.193 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Court, Cuddalore.

2.The appellant is claimant in M.C.O.P.No.193 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Court, Cuddalore. He filed the said claim petition claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.07.2000. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to 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.2,86,800/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the appellant sustained injuries and suffered fracture in the right hand forearm, wrist and elbow. The appellant examined PW2-Doctor to prove the nature of injuries and disability suffered by him. PW2-Doctor assessed that the appellant suffered 60% disability. The Tribunal reduced the same to 20% disability without any basis. The appellant was working as a driver in T.P.T.C. (TNESTC) on daily wages. Due to the injuries sustained by the appellant, he lost his job. The Tribunal ought to have granted compensation towards 100% disability. The amounts awarded by the Tribunal towards transportation, extra nourishment and pain & suffering are meagre. The Tribunal has not granted any amount towards future medical expenses and loss of amenities and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal considering the nature of injuries sustained by the appellant, fixed disability of the appellant at 20%, calculated the daily batta and awarded compensation by applying multiplier method and granted amounts under different heads, which are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the respondent/Transport Corporation and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellant has contended that he sustained injuries and suffered fracture in the right hand forearm, wrist and elbow. To prove the same, he examined himself as PW1, marked documents as Exp3 to Exp5 and examined PW2-Doctor, who assessed that the appellant suffered 60% disability. In his cross examination, PW2-Doctor has admitted that the injuries sustained by the appellant are not scheduled injuries. The percentage of disability certified by PW2 is not for whole body. The Tribunal considering the evidence of PW1, fixed monthly income of the appellant at Rs.6,000/-, fixed the disability for the whole body at 20% and granted compensation. The age of the appellant was 30 years at the time of the accident. The accident is of the year 2000 and the monthly income fixed by the Tribunal is not meagre. The Tribunal has not granted any enhancement towards future

prospects and the appellant is entitled to 40% enhancement towards future prospects. Applying the multiplier '17' and fixing 20% towards disability, the amount granted by the Tribunal towards future loss of income is modified to Rs.3,42,720/- (Rs.6,000 + 2,400 (Rs.6,000/- x 40%) x 12 x 17 x 20/100). The Tribunal has not awarded any amount towards loss of amenities. A sum of Rs.10,000/- is granted towards loss of amenities. The amounts awarded by the Tribunal under other heads 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.   | Future loss of income | 2,44,800                        | 3,42,720                          | Enhanced                               |
| 2.   | Loss of income        | 12,000                          | 12,000                            | Confirmed                              |
| 3.   | Transportation        | 5,000                           | 5,000                             | Confirmed                              |
| 4.   | Extra nourishment     | 5,000                           | 5,000                             | Confirmed                              |
| 5.   | Pain and suffering    | 15,000                          | 15,000                            | Confirmed                              |
| 6.   | Attender fee          | 5,000                           | 5,000                             | Confirmed                              |
| 7.   | Loss of amenities     | -                               | 10,000                            | Granted                                |
|      | Total                 | Rs.2,86,800/-                   | Rs.3,94,720/-                     | Enhanced by Rs.1,07,920/-              |

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,86,800/- is hereby enhanced to Rs.3,94,720/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court 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 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 (CCC)

//True copy//

Sub Assistant Registrar

mtl

To

1.The Additional District Judge,  
Motor Accidents Claims Tribunal,  
Cuddalore.

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

+1cc to Mr.D.S.Thirumavalavan, Advocate SR.No.41531

C.M.A.No.2102 of 2015

SV (CO)  
GMY (03/09/2019)



WEB COPY