

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.12.2019
CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1386 of 2016

Mohameed Ismail

.. Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Pallavan House,
Anna Salai, Chennai 600 002.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.07.2015 made in M.C.O.P.No.5512 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For Respondent : Mr.S.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 21.07.2015 made in M.C.O.P.No.5512 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.5512 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.12.2011.

3.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 MTC bus bearing Registration No.TN 01 N 4094 belonging to the respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.1,09,500/- as compensation to the respondent/claimant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant was aged 41 years and was working as Driver and was earning a sum of Rs.15,000/- per month. The Tribunal fixed only a sum of Rs.5,000/- as monthly income and granted meagre amount of Rs.20,000/-(Rs.5,000 x 4) towards loss of income for a period of four months. P.W.3/Doctor has assessed the disability of the appellant at 85% but the Tribunal reduced the same to 15% without assigning any valid reason. The Tribunal failed to award any amount towards loss of earning power and future medical expenses. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6.Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the disability assessed by P.W.3/Doctor is excessive. The Tribunal has considered the evidence of P.W.3/Doctor and reduced the percentage of disability to 15%, which is in order. The Tribunal has rightly fixed monthly income of the appellant at Rs.5,000/- per month and awarded a sum of Rs.20,000 towards loss of income for a period of four months, which is not meagre. In any event, the amounts awarded by the Tribunal under other heads are not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent-Transport Corporation and perused the entire materials on record.

8.It is the contention of the appellant that he suffered fracture in the left knee and ankle and injury in over right lower limb and facial injuries. To substantiate the injuries sustained by him, the appellant has examined P.W.2/Doctor, who deposed about the nature of injuries and treatment taken by the appellant and assessed disability at 35%. The Tribunal has reduced the disability to 15% and awarded Rs.30,000/-towards disability at the rate of Rs.2,000/- per percentage, on the ground that the disability assessed by PW.2/Doctor is on the higher side. The said reasoning is erroneous. In view of the nature of injuries, evidence of P.W.2/Doctor and materials on record, the appellant is entitled to compensation for 35% disability at the rate of Rs.2,000/- per percentage. Thus, a sum of Rs.70,000/- is awarded towards disability. The appellant has contended that he was a driver in a travels and earning a sum of Rs.15,000/- per month. In the absence of any document to prove the avocation and income, the Tribunal has rightly fixed monthly income of the appellant at Rs.5,000/- and awarded a sum of Rs.20,000 towards loss of income for a period of four months, which is not meagre. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they 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.	Disability	30,000/-	70,000/-	enhanced
2.	Loss of income	20,000/-	20,000/-	confirmed
3.	Transportation	7,000/-	7,000/-	confirmed
4.	Extra nourishment	7,000/-	7,000/-	confirmed
5.	Damage to clothes	500/-	500/-	confirmed
6.	Pain and sufferings	35,000/-	35,000/-	confirmed
7.	Medical expenses	5,000/-	5,000/-	confirmed
8.	Loss of amenities	5,000/-	5,000/-	confirmed
	Total	Rs.1,09,500/-	Rs.1,49,500/-	enhanced by Rs.40,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,09,500/- is hereby enhanced to Rs.1,49,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/ claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

vkr

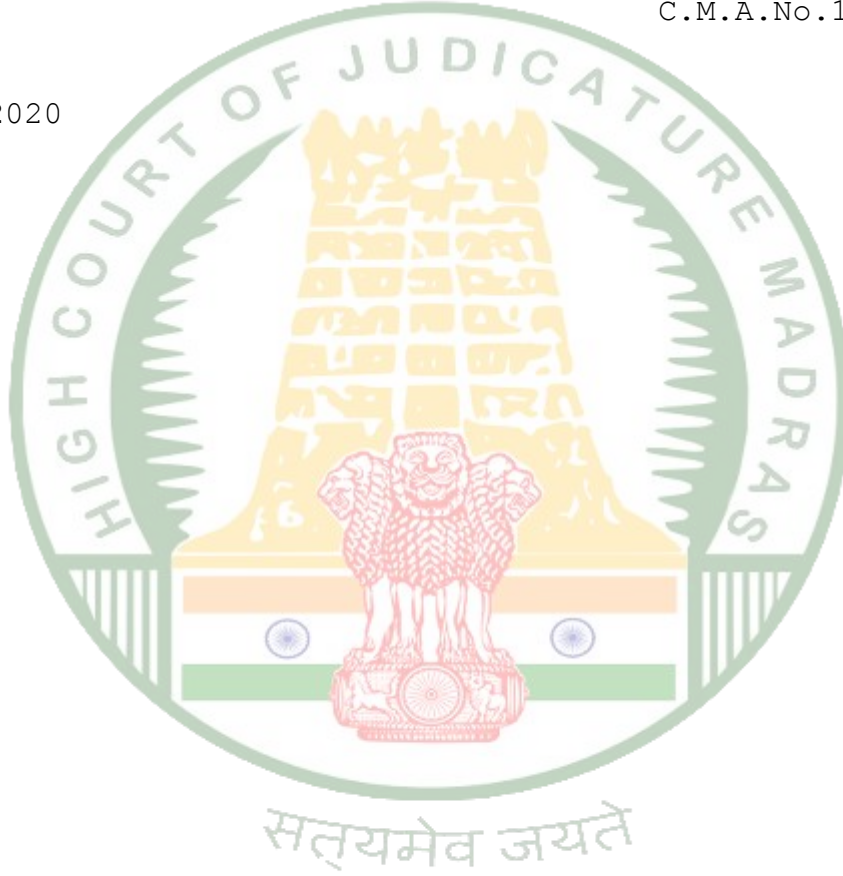
To

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

+lcc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.10574

C.M.A.No.1386 of 2016

SJ(CO)
CS/22/10/2020



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