



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2405 of 2015

R.Dhinakaran

.. Appellant/Claimant

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Annasalai, Chennai - 600 002. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.08.2014 made in M.C.O.P.No.518 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja
For Respondent : Mr.K.S.Suresh

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 06.08.2014 made in M.C.O.P.No.518 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.518 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 05.01.2012.

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 directed the respondent-Transport Corporation to pay a sum of Rs.1,34,500/- as compensation to the appellant.

4.Not being satisfied with the amount 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 P.W.2/Doctor assessed the percentage of disability suffered by the appellant at 40% and the Tribunal reduced the same to 30% and granted compensation for 30% disability, which is not correct. The Tribunal ought to have awarded compensation for 40% disability. The appellant has taken treatment in the hospital as in-patient from 06.01.2012 to 21.01.2012. The Tribunal has not granted any amount towards attendant charges. The appellant was working as a fish cutter and was earning a sum of Rs.5,000/- per month and the Tribunal has granted compensation towards loss of income only for three months, which is meagre. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the disability assessed by P.W.2/Doctor is on higher side. The Tribunal rightly reduced the percentage of disability assessed by P.W.2/Doctor from 40% to 30% on the ground that assessment of disability by P.W.2/Doctor is on higher side. The appellant has not let in any material evidence to prove that he was earning a sum of Rs.5,000/- per month and lost income due to the injuries. In the absence of material evidence, the Tribunal has granted compensation towards loss of income for three months, which is excessive. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

8.From the materials available on record, it is seen that P.W.2/Doctor certified that appellant suffered 40% disability. The Tribunal reduced the same to 30% on the ground that assessment of disability by P.W.2/Doctor is too high. The reason given by the Tribunal for reducing the percentage of disability is not valid. The appellant is entitled to compensation towards 40% disability. The accident occurred in the year 2012 and the Tribunal has granted compensation towards disability at the rate of Rs.2,000/- per percentage, which is meagre and the same is hereby enhanced to Rs.3,000/- per percentage. The amount awarded by the Tribunal towards disability is modified to Rs.1,20,000/- [Rs.3,000/- X 40]. The learned counsel for the appellant has contended that the appellant was working as a fish cutter and was earning a sum of Rs.5,000/- per month. The Tribunal has granted a sum of Rs.15,000/- towards loss of income for three months, which is meagre. Due to the injuries, he would not have attended his work atleast for a period of six months. The appellant is entitled to compensation towards loss of income for



six months at the rate of Rs.5,000/- per month. The compensation awarded by the Tribunal towards loss of income is modified to Rs.30,000/- [Rs.5,000/- X 6]. The Tribunal has awarded a sum of Rs.7,000/- towards transportation, which is meagre and the same is hereby enhanced to Rs.10,000/-. A sum of Rs.5,000/- awarded by the Tribunal towards loss of amenities is hereby enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.7,000/- towards damage to clothes, which is excessive and the same is hereby reduced to Rs.1,000/-. The appellant has taken treatment in the hospital as in-patient from 06.01.2012 to 21.01.2012 and the Tribunal has not granted any amount towards attendant charges. A sum of Rs.10,000/- is granted by this Court towards attendant charges. The amounts awarded by the Tribunal towards pain and suffering and medical expenses are 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.	Loss of income	15,000/-	30,000/-	Enhanced
2.	Transportation	7,000/-	10,000/-	Enhanced
3.	Damage to cloth	7,000/-	1,000/-	Reduced
4.	Medical expenses	10,000/-	10,000/-	Confirmed
5.	Loss of amenities	5,000/-	10,000/-	Enhanced
6.	Pain and suffering	30,000/-	30,000/-	Confirmed
7.	Disability	60,000/-	1,20,000/-	Enhanced
8.	Attendant charges	-	10,000/-	Granted
	Total	Rs.1,34,000/- Tribunal arrived at Rs.1,34,500/-	Rs.2,21,000/-	enhanced by Rs.86,500/-

9.From the award of the Tribunal it is seen that the Tribunal has awarded a sum of Rs.1,34,500/- as compensation. But the total compenstion only comes to Rs.1,34,000/-.

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,34,500/- is hereby enhanced to Rs.2,21,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee, if any on the enhanced amount of 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 by making necessary applications before the Tribunal. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

krk
To

1.The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

Copy to

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

+1 cc to M/s.F.Terry Chella Raja Advocate sr 40476

C.M.A.No.2405 of 2015

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