



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3131 of 2012

Perumalsamy

.. Appellant/Petitioner

Vs.

1.Raja

2.The Managing Director,  
Tamil Nadu State Transport Corporation Ltd.,  
(Coimbatore) Division-1,  
37, Mettupalayam Road,  
Coimbatore-District.

(The first respondent is already set exparte before  
the tribunal. Hence notice may be dispense with  
in this appeal) .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2010 made in M.C.O.P.No.1228 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court-V, Coimbatore at Tiruppur and to enhance the compensation amount claimed by the appellant herein with interest.

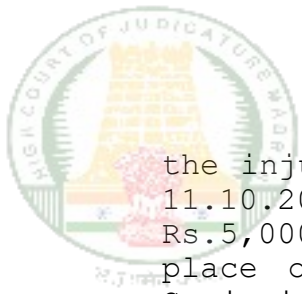
For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.S.V.Vasanthakumar for R2  
R1-Exparte

#### J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 30.06.2010 made in M.C.O.P.No.1228 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court-V, Coimbatore at Tiruppur.

2.The appellant is the claimant in M.C.O.P.No.1228 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court-V, Coimbatore at Tiruppur. He filed the above claim petition, claiming a sum of Rs.5,00,000/- as compensation for



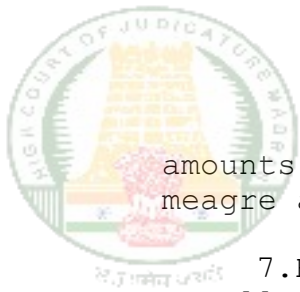
the injuries sustained by him in the accident that took place on 11.10.2007. The appellant was an agricultural coolie and earned Rs.5,000/- per month, at the time of accident. The accident took place on 11.10.2007, around 7.30 a.m. at Udumalpet road near Senjeri hill; while the appellant was going by his bicycle, a Government bus bearing Registration No.TN-38-N-1011, which came in the opposite direction, dashed the bicycle, on account of which, the appellant was thrown away and sustained grievous injuries.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the bus/first respondent belonging to the second respondent /Tamil Nadu Transport Corporation.

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

5.The learned counsel appearing for the appellant contended that the compensation awarded by the Tribunal is meagre and it has to be enhanced since the appellant was admitted in the Government Hospital, Palladam and after first aid the appellant continued his treatment for a long time as outpatient. However, the Tribunal has not awarded any amount towards loss of income for the period of treatment since even after discharge, the appellant was unable to attend his work due to injuries suffered by him and the Tribunal ought to have adopted multiplier method as regards the disability sustained by the appellant. He also contended that the Tribunal awarded a meagre compensation towards pain and suffering, Transportation, extra nourishment and medical expenses damage to clothes and it has to be enhanced. The Tribunal has not awarded any amount towards damage to clothing and his bicycle. He further submitted that Pw-3 Doctor had assessed 70% of permanent disability, which is evident from Ex-P5, but the tribunal without any contra evidence nor assigning any valid reason, reduced to 48%. Moreover the appellant underwent for surgery in his hand on 29.10.2007. Now the appellant is unable to sit or stand properly and he does not able to do his earlier avocations without the help of others.

6.Per contra, learned counsel appearing for the second respondent/Tamil Nadu State Transportation Corporation Limited contended that the appellant has not produced any material evidence to prove his avocation and income and in the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.2,000/- per month as notional income of the appellant, which is excessive. Therefore, the appellant is not entitled to any amounts towards pain and suffering, Transportation, extra nourishment and Transportation. 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/claimant as well as the learned counsel appearing for the the 2nd respondent/Transport Corporation and perused the materials available on record.

8. It is the contention of the appellant that at the time of accident, he was working as Agricultural Cooli Worker and was earning a sum of Rs.5,000/- per month, however, the appellant failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.2,000/- per month as income of the appellant after deducting 1/3rd towards his personal expenses. The accident occurred in the year 2007 and the notional income fixed by the Tribunal is not meagre. This Court does not find any infirmity in the said conclusion of the Tribunal as regards the loss of income is concerned. Thus, the compensation awarded by the Tribunal towards Loss of income for a sum of Rs.1,72,000/- is just and reasonable.

9. Considering the nature of injuries and period of treatment taken by the appellant, the Tribunal has awarded a sum of Rs.5,000/- and Rs.10,000/- towards extra nourishment and loss of amenities, in the considered opinion of this Court, the said amounts are meager. Hence, a sum of Rs.10,000/- towards extra nourishment and Rs.25,000/- towards loss of amenities are enhanced by this Court. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same 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     | 1,72,800/-                      | 1,72,800/-                        | confirmed                              |
| 2.    | Pain and suffering | 25,000/ -                       | 25,000/ -                         | confirmed                              |
| 3.    | Transportation     | 5,000/ -                        | 5,000/ -                          | confirmed                              |
| 4.    | Medical expenses   | 16,500/-                        | 16,500/-                          | Confirmed                              |
| 5.    | Extra nourishment  | 5,000/-                         | 10,000/-                          | Enhanced                               |
| 6.    | Loss of amenities  | 10,000/-                        | 25,000/-                          | Enhanced                               |
|       | Total              | Rs.2,34,300/-                   | Rs.2,54,300/-                     | Enhanced by Rs.20,000/-                |



10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,34,300/- is hereby enhanced to Rs.2,54,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/ Tamil Nadu State Transport Corporation is directed to deposit the enhanced award amount now determined by this Court together 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 order to the credit of M.C.O.P.No.1228 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court-V, Coimbatore at Tiruppur. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by filing separate petition before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal,  
Fast Track Court-V,  
Coimbatore at Tiruppur.

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 103760

C.M.A.No.3131 of 2012

SAI (CO)  
GN(12/08/2021)