

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1895 of 2016

A. Perumal

.. Appellant/Petitioner

Vs.

The Managing Director,  
Metropolitan Transport Corporation Limited,  
(No. 37, Mettupalayam Road),  
Coimbatore 641 043.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 19.09.2014, made in M.C.O.P.No. 65 of 2011, on the file of the Sub Court, (Motor Accident Claims Tribunal), Namakkal.

For Appellant : Mr. Ma.P. Thangavel

For Respondent : Mr. K.J. Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed seeking enhancement of the compensation granted by the award dated 19.09.2014, made in M.C.O.P.No. 65 of 2011, on the file of the Sub Court, (Motor Accident Claims Tribunal), Namakkal.

2.The appellant-claimant filed M.C.O.P.No. 65 of 2011, on the file of the Sub Court, (Motor Accident Claims Tribunal), Namakkal, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.02.2011.

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 directed the respondent-Transport Corporation to pay a sum of Rs.74,665/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 19.09.2014, made in M.C.O.P.No. 65 of 2011, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that he was working as Labour in the crusher unit and was earning a sum of Rs.7,500/- per month. Due to the accident, he suffered grievous injuries in the head, right ear and left leg. Though P.W.2-Doctor assessed 35% permanent disability, it will affect his avocation 100%, as he is coolie worker. The appellant was aged 30 years at the time of accident. The Tribunal, considering the age of the appellant and disability sustained by the appellant, ought to have adopted multiplier method. The Tribunal has not awarded any amount towards future medical expenses. In any event, the amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6. Per contra, Mr. K.J. Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal considering the nature of injuries, rejected the percentage of disability assessed by P.W.2-Doctor and awarded a sum of Rs.25,000/- towards disability. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal rightly fixed a sum of Rs.4,500/- as monthly income and granted compensation towards loss of income for three months. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. It is the contention of the appellant that he sustained grievous injuries and P.W.2-Doctor assessed 35% permanent disability for the same. He has also marked the disability certificate issued by P.W.2-Doctor as Ex.P11. The Tribunal rejected the disability certificate marked as Ex.P11, on the ground that no surgery was done in the head and granted meagre amount towards disability. The same is erroneous. The appellant is entitled to compensation for disability by awarding a sum of Rs.2,000/- per percentage for

35% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs. 70,000/-. The appellant contended that he was working as Labour in Crushing Unit and was earning a sum of Rs.7,500/- per month. The appellant failed to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.4,500/- as notional income per month and the same is meagre. The accident is of the year 2011. The notional income of the appellant is fixed at Rs.7,500/- per month. Due to the injuries and the treatment taken, the appellant would not have worked atleast for six months. Hence, the amount awarded by the Tribunal towards loss of income is modified to Rs.45,000/- (Rs.7,500/- x 6 months) towards loss of income. From the records, it is seen that the appellant took treatment as in-patient in Hospital from 21.02.2011 to 23.02.2011. The Tribunal has not awarded any amount towards attendant charges. Hence, a sum of Rs.5,000/- is awarded towards the attendant charges. A sum of Rs.10,000/- is granted towards loss of amenities. The Tribunal has granted meagre sum towards pain and suffering and extra nourishment. Considering the nature of injuries sustained by the appellant, he is entitled to a sum of Rs.20,000/- towards pain and suffering and Rs.10,000/- towards extra nourishment. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they 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.   | Disability         | 25,000/-                        | 70,000/-                          | Enhanced                               |
| 2.   | Loss of income     | 13,500/-                        | 45,000/-                          | Enhanced                               |
| 3.   | Extra nourishment  | 5,000/-                         | 10,000/-                          | enhanced                               |
| 4.   | Medical expenses   | 16,165/-                        | 16,165/-                          | Confirmed                              |
| 5.   | Loss of amenities  | -                               | 10,000/-                          | Granted                                |
| 6.   | Pain and suffering | 10,000/-                        | 20,000/-                          | Enhanced                               |
| 7.   | Transportation     | 5,000/-                         | 5,000/-                           | Confirmed                              |

|    |                   |          |            |                           |
|----|-------------------|----------|------------|---------------------------|
| 8. | Attendant charges | -        | 5,000/-    | Granted                   |
|    | Total             | 74,665/- | 1,81,165/- | Enhanced by Rs.1,06,500/- |

9. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.74,665/- is enhanced to Rs.1,81,165/- along with interest and costs. The respondent-Transport Corporation is directed to deposit the enhanced award amount along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No. 65 of 2011. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,  
(Motor Accident Claims Tribunal),  
Namakkal.

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

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.105483  
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.105076

C.M.A.No.1895 of 2016

MR (CO)  
CB (31/07/2020)

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