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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.544 of 2015

J.Venkatesan

... Appellant

Vs

Metropolitan Transport Corporation Ltd.,

rep. by its Managing Director,

Pallavan Salai, Chennai - 600 002.

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.04.2014 made in M.C.O.P.No.2484 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellant : Mrs.P.T.Salim Fathima

For Respondent : Mr.S.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 10.04.2014 made in M.C.O.P.No.2484 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

2.The appellant herein is the claimant aggrieved against the award of the Tribunal Rs.2,25,000/- as compensation as against the claim of Rs.7,00,000/-.

3.The brief facts is as follows:

On 06.05.2011 the MTC bus route No.M70, Fleet No.VPI 584, registration No.TN-01-N-4648 was on its schedule trip proceeding from Thiruvannamiyur to Koyambedu bus terminus. At about 17.30 hours, the bus was plying on 100 feet road near Koyambedu. When the bus reached near Vadapalani signal, the driver was waiting for the clearance of the signal and after the clearance the driver started to move the bus very slowly and carefully. At



that time, a male passenger tried to board into the bus carrying with two number of bags by his both sides with luggage without minding about the other vehicles and he could not control his balance and slipped by the handle bars of the bus, fell down and sustained injuries. The driver and the conductor of the bus had admitted the injured at Surya Hospital for treatment. Thus the petitioner claimed a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident.

4.The respondent/Transport Corporation denied the mode of accident as alleged in the claim petition. The respondent/Transport Corporation contended that the accident was occurred only on the negligent act of the intending passenger/injured. Therefore the intending passenger/injured is solely responsible for the accident and the MTC driver was not responsible for the accident. Hence this respondent/Transport Corporation is not liable to pay compensation. Further the respondent denied that the injured was working as office assistant ad night watchman and he was earning a sum of Rs.10,000/- per month is false and frivolous in nature. Regarding the sum claimed by the petitioner is excessive in the absence of any proof.

5.The Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the bus and also awarded a sum of Rs.2,25,000/- as compensation under the following heads:

Permanent disability	Rs.45,000/-
Pain and suffering	Rs.40,000/-
Extra nourishment	Rs.10,000/-
Attendant charges	Rs.10,000/-
Transportation charges	Rs.10,000/-
Medical expenses rounded to	Rs.35,000/-
Loss of income for 4 months rounded to	Rs.25,000/-
Loss of future prospects and amenities	Rs.50,000/-
Total	Rs.2,25,000/-

Aggrieved against the said award the claimant has preferred this appeal.



6. In the grounds of appeal, the appellant has contended that the appellant has sustained multiple fracture and degloving injury in left leg foot and ankle, due to which he has been completely immobilised for about six months and the disability being assessed at 25%, the determination of the Tribunal only at 15% and the sum awarded at Rs.45,000/- is very much on the meagre side. Further the sum awarded towards loss of income for four months at Rs.25,000/- is also very much on the meagre side. Since the appellant who is a night watchman by his occupation and was under treatment, he cannot continue his work as he was doing earlier. Regarding the sum awarded towards future prospects and loss of amenities at Rs.50,000/- is also very much on the meagre side. The Tribunal has not awarded any amount towards loss of earning power when the claim is made for Rs.3,00,000/-. Hence the appellant is very much aggrieved against the award made by the Tribunal at Rs.2,25,000/- when the claim is for Rs.7,00,000/-.

7. Heard Mrs.P.T.Salim Fathima, learned counsel appearing for the appellant and Mr.S.Sivakumar, learned counsel appearing for the respondent/Transport Corporation and perused all the materials available on record.

8. On perusal of the records, the contentions raised by the appellant is that he examined Dr.Amarnath R.Sowlee as PW2 to prove the disability suffered by him. PW2 has stated that there was non union of 2nd Ppx and mal-union of 3rd, 4th and 5th Ppx, that the petitioner has suffered from post traumatic stiffness, left foot toe widening and swelling on standing. Consequently, PW2 has assessed the disability as 25% partial and permanent and issued a disability certificate which was marked as EX.P6. It is to be pointed out that PW2 is not a doctor who gave treatment to the petitioner at any point of time and he assessed the disability more than two years after the accident. The petitioner has not produced any documentary evidence to prove the further medical treatment if any taken by him for the alleged suffering met out by him at any point of time after he was discharged from the hospital and till he had obtained disability certificate from PW2. It is observed by the Tribunal that the disability assessed by PW2 as 25% for the fracture of phalanx of 2nd toe to 5th toe alone is definitely on the very higher side. Even assuming that all the four toes were in a vegetative condition and disability would not be exceed 15%. Considering the nature of injuries sustained by the petitioner and the pain moderately interfering with function, the disability suffered by the petitioner is fixed as 15% only. Due to the said injuries appellant was under treatment as out



patient for long time. So he cannot continue his work as he was doing earlier. A sum of Rs.25,000/- awarded by the Tribunal towards loss of income for four months is very much on the meagre side and this Court awards Rs.36,000/- towards loss of income for six months. The sum awarded by the Tribunal under other heads are properly considered by the Tribunal. 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)
1.	Partial and permanent disability	Rs.45,000/-	Rs.45,000/-
2.	Pain and suffering	Rs.40,000/-	Rs.40,000/-
3.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
4.	Attendant charges	Rs.10,000/-	Rs.10,000/-
5.	Transportation charges	Rs.10,000/-	Rs.10,000/-
6.	Medical expenses rounded to	Rs.35,000/-	Rs.35,000/-
7.	Loss of income for six months (Rs.6,000/- x 6)	Rs.25,000/-	Rs.36,000/-
8.	Future prospects and amenities	Rs.50,000/-	Rs.50,000/-
	Total	Rs.2,25,000/-	Rs.2,36,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,25,000/- is hereby enhanced to Rs.2,36,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

10.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 four 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Special Subordinate Judge No.II,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.S.Sivakumar, Advocate Sr.63059
+1cc to M/s.M.Swamikkannu, Advocate Sr.63929

C.M.A.No.544 of 2015

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srg 13/01/2020