

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.335 of 2018

Olimuthu

.. Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited Chennai,
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 22.06.2015 made in M.C.O.P.No.545 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri.

For Appellant : Ms.A.Subadra for
Ms.M.Malar

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 22.06.2015 made in M.C.O.P.No.545 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri.

2.The appellant is the claimant in M.C.O.P.No.545 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri. He filed the above said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.04.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the 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.1,59,000/- as compensation to the appellant/claimant.

4. Not being satisfied with the award amount granted by the Tribunal dated 22.06.2015 made in M.C.O.P.No.545 of 2011, 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 certified that the appellant suffered 60% disability and deposed with regard to nature of injuries and disability sustained by the appellant. The appellant was aged 47 years at the time of accident and was working as a cleaner in the lorry and was earning Rs.350/- per day. The Tribunal erroneously fixed meager sum of Rs.4,500/- per month as the monthly income of the appellant. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the appellant did not produce any material to show the avocation and income of the appellant. In the absence of any material, the Tribunal has rightly fixed a sum of Rs.4,500/- per month as notional income of the appellant. P.W.2/Doctor did not treat the appellant. He has not examined the appellant clinically and filed X-Ray. The Tribunal considering the evidence of P.W.2/Doctor, who did not treat the appellant, reduced the percentage of disability from 60% to 40% and awarded excessive amounts under different heads. In view of the same, the appellant is not entitled for any enhancement of compensation and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that the appellant had examined Doctor as P.W.2, who deposed about nature of injuries and issued disability certificate, certifying that the appellant suffered 60% disability. The Tribunal reduced the percentage of disability from 60% to 40% on the ground that the assessment of Doctor appears to be on the higher side. The said reasoning is not correct. Considering the entire materials on record and evidence of P.W.2/Doctor and nature of injuries, the percentage of disability is fixed at 60%. The appellant is entitled to a sum of Rs.1,20,000/- towards permanent disability at the rate of Rs.2,000/- per percentage for 60% disability. The accident occurred in the year 2011. The notional income fixed by the Tribunal at Rs.4,500/- per month is meager. Therefore, the

monthly income of the appellant is fixed at Rs.6,000/- and the amount granted by the Tribunal for loss of income for two months is enhanced to Rs.18,000/- at the rate of Rs.6,000/- for three months. The amount awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.6,000/-} \times 3 = \text{Rs.18,000/-}$$

The amounts awarded by the Tribunal under other heads 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	9,000/-	18,000/-	enhanced
2.	Transportation	5,000/-	5,000/-	confirmed
3.	Extra Nourishment	5,000/-	5,000/-	confirmed
4.	Medical expenses	5,000/-	5,000/-	confirmed
5.	Attender charges	5,000/-	5,000/-	confirmed
6.	Loss of amenities	25,000/-	25,000/-	confirmed
7.	Pain and Suffering	25,000/-	25,000/-	confirmed
8.	Permanent Disability	80,000/-	1,20,000/-	enhanced
	Total	Rs.1,59,000/-	Rs.2,08,000/-	enhanced by Rs.49,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,59,000/- is hereby enhanced to Rs.2,08,000/- 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 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.

krk

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Ponneri.

+1cc to Mr.M.Malar, Advocate, SR.No.19512

+1cc to Mr.S.Sivakumar, Advocate, SR.No.20107

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kk[co]
srg 28/11/2019



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