

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.638 of 2018

D.Chandrasekar

.. Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Pallavan Salai,
Chennai 2.

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 01.12.2011, made in M.C.O.P.No.966 of 2009, on the file of the Additional District and Sessions Judge, Fast Track Court-III, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas
For Respondent : Mr.S.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of the compensation granted by the Tribunal in the award dated 01.12.2011, made in M.C.O.P.No.966 of 2009, on the file of the Additional District and Sessions Judge, Fast Track Court-III, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/claimant filed M.C.O.P.No.966 of 2009, on the file of the Additional District and Sessions Judge, Fast Track Court-III, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.2,50,000/- as compensation for the injuries sustained by him in the accident that took place on 03.11.2005.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and directed the respondent to pay a sum of Rs.71,447/- as compensation to the appellant/claimant.

4. Not being satisfied with the amounts granted by the award dated 01.12.2011, made in M.C.O.P.No.966 of 2009, the appellant/claimant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the appellant was a fabricator and doing tinkering work and was earning a sum of Rs.15,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.5,000/- per month as the notional income of the appellant and granted very meagre amount towards loss of income for a period of two months, while the appellant suffered grievous injuries and due to the injuries he could not do the work as he was doing earlier. The Tribunal has awarded a sum of Rs.45,000/- towards disability at the rate of Rs.1,000/- per percentage for 45% disability. The same is meagre. The Tribunal ought to have awarded a sum of Rs.3,000/- per percentage towards disability. The Tribunal erred in awarding only a sum of Rs.15,000/- altogether for pain and suffering, transportation and extra nourishment, instead of ordering separately. The Tribunal failed to grant any amount towards loss of amenities and loss of earning power and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the appellant has not proved that he was working as a fabricator and tinker and was earning a sum of Rs.15,000/- per month. In the absence of any material, the Tribunal rightly fixed a sum of Rs.5,000/- as the monthly income and granted compensation towards loss of earning for a period of two months, which is not meagre. The Tribunal considering the nature of injuries and disability assessed by the Doctor at 45%, granted compensation, which are not meagre 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. From the materials on record, it is seen that the appellant has contended that he was working as a fabricator and tinker and was earning a sum of Rs.15,000/- per month. He has not filed any document with regard to avocation and income. In the absence of materials, the Tribunal fixed monthly income of the appellant at Rs.5,000/-. The same is meagre. The accident is of the year 2005. A sum of Rs.6,500/- is fixed as monthly income of the appellant and a sum of Rs.26,000/- is granted towards loss of income for a period of four months. The appellant has taken treatment in Hospital for a period of 15 days as in-patient and subsequently has taken treatment as out-patient. No amount has been granted towards loss of amenities,

pain and suffering and attender charges. Hence, a sum of Rs.10,000/- each is granted towards attender charges, pain and suffering and loss of amenities. Considering the evidence of P.W.2-Doctor and the disability certificate issued by him, the Tribunal granted a sum of Rs.45,000/- towards disability at the rate of Rs.1,000/- per percentage for 45%. The same is meagre. The appellant is entitled to a sum of Rs.67,500/- towards disability at the rate of Rs.1,500/- per percentage for 45% disability. The consolidated amount granted under the head transportation, pain and suffering, nourishment and medical expenses is meagre and the same is enhanced to Rs.30,000/-. The amounts granted by the Tribunal under other head of medical expenses is just and reasonable and the same is hereby 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	45,000/-	67,500/-	Enhanced
2.	Attender charges	-	10,000/-	Granted
3.	Loss of amenities	-	10,000/-	Granted
4.	Transportation, nourishment and medical expenses	15,000/-	30,000/-	Enhanced
5.	Medical expenses	1,447/-	1,447/-	Confirmed
6.	Loss of income	10,000/-	26,000/-	Enhanced
7.	Pain and suffering	-	10,000/-	Granted
	Total	71,447/-	1,54,947/-	Enhanced by Rs.83,500/-

9. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.71,447/- is enhanced to Rs.1,54,947/- along with interest and costs. The appellant is directed to pay the Court fee, if any on the enhanced award amount. The respondent 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.966 of 2009. 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. However, the appellant is not entitled for any interest for the delay period on the amount enhanced by this Court.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Additional District and Sessions Judge,
Fast Track Court-III,
(Motor Accident Claims Tribunal),
Chennai.

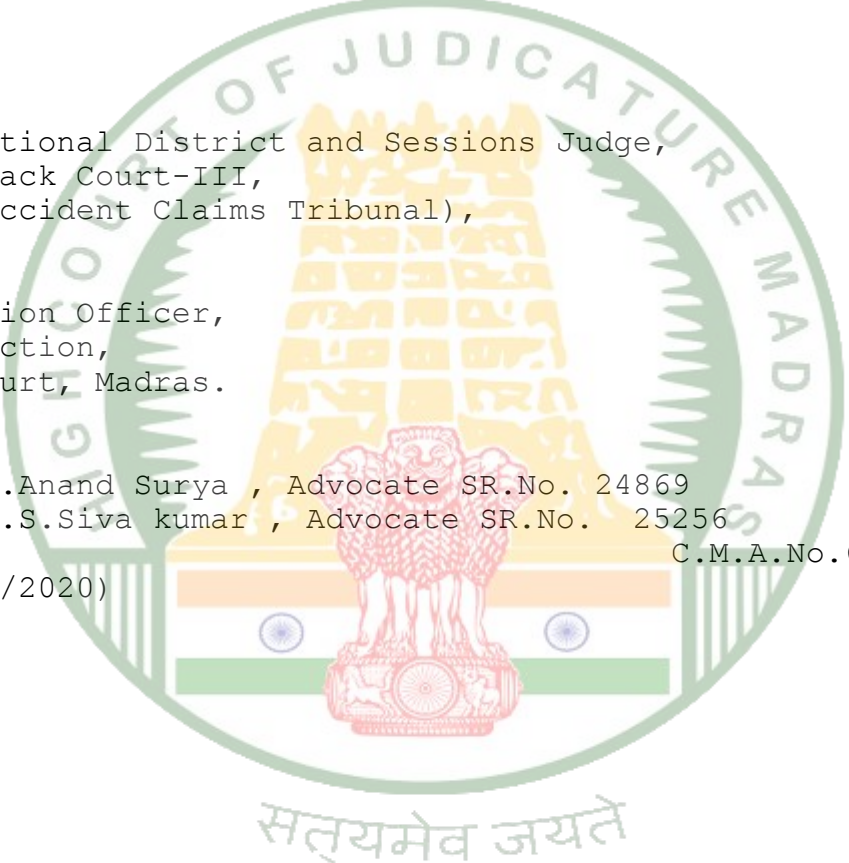
2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.Anand Surya , Advocate SR.No. 24869

+1cc to Mr.S.Siva kumar , Advocate SR.No. 25256

C.M.A.No.638 of 2018

A.SK(23/09/2020)



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