

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2976 of 2019

Mohammed Ali

.. Appellant/Claimant

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai,
Chennai - 600 002.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.07.2017 made in M.C.O.P.No.1162 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan
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 01.07.2017 made in M.C.O.P.No.1162 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1162 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.11,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.02.2014. 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/Transport Corporation to pay a sum of Rs.1,69,600/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the Tribunal awarded a meagre amount of Rs.1,69,600/- against the claim of Rs.11,00,000/- and the assessment of 20% disability is also not sustainable under law. The appellant/injured person suffered with disability of fracture of distal on the toes, degloving injury in the left foot, under such circumstances the appellant herein is not able to walk or stand freely and still pain exists on the left leg, hence it is just and necessary for the Court below to adopt multiplier method to award reasonable compensation. The Tribunal has not considered and appreciated the evidence placed before the Tribunal by PW2/Doctor. Even after considering the nature of injuries suffered by the appellant and by verifying the medical records, the assessment of the Doctor at 20% and the Tribunal taken the disability at 15% which is not reasonable. The sum awarded by the Tribunal under the head of pain & suffering, transportation, attender charges, loss of earnings and extra nourishment are also not reasonable. Hence on the whole the appellant is very much aggrieved by the award made by the Tribunal and this appeal is preferred for enhancement of compensation.

4.Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent/Transport Corporation contended that the appellant has failed to prove his age, avocation and income. In the absence of material evidence, the Tribunal has taken Rs.250/- per day as daily wages of the appellant. PW2/Doctor assessed that the appellant has suffered 20% disability but the Tribunal taken at 15% disability which is proper and reasonable. The Tribunal has granted Rs.3,000/- per percentage and the amounts granted by the Tribunal under other heads are also not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Heard Mr.R.Nalliyappan, 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.

6.From the materials available on record, it is seen that the appellant had sustained grievous injury and suffered fracture. The appellant has taken treatment at Rajiv Gandhi Government General hospital as in-patient from 03.02.2014 to 11.03.2014 for 37 days. To prove the same, he examined himself as P.W.1 and examined Doctor as P.W.2 who assessed the disability at 20% partial permanent disability and also issued a disability certificate to that effect which is marked as Ex.P7 and also deposed about the disability of the petitioner. The Tribunal has taken 15% disability by taking Rs.3,000/- per

percentage and awarded Rs.45,000/- under the head disability which is reasonable and does not require any modification. With regard to the submissions that due to the nature of injuries and fracture, the appellant could not have worked atleast for 3 months, who was working as a helper and was earning a sum of Rs.10,000/- per month, the appellant has failed to prove the same. But the Tribunal by taking into considering the year of the accident, has fixed the monthly income and arrived the loss of income at Rs.31,750/- which is also proper and reasonable. Likewise, the sum awarded under the head Transport, extra nourishment, damages to clothes, medical bills and pain & suffering are also confirmed. The Tribunal has not awarded any sum towards future medical expenses and loss of amenities hence this Court grants a sum of Rs.50,000/- and Rs.15,000/- under those heads respectively. The sum awarded by the Tribunal towards attender charges is meagre and is enhanced to Rs.15,000/- and the sum awarded by the Tribunal towards damages for mental shock and agony is set aside. 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.	Loss of income	Rs.31,750/-	Rs.31,750/-
2.	Attender charges	Rs.9,250/-	Rs.15,000/-
3.	Transport	Rs.10,000/-	Rs.10,000/-
4.	Extra nourishment	Rs.20,000/-	Rs.20,000/-
5.	Damages to clothes	Rs.1,000/-	Rs.1,000/-
6.	Medical bills	Rs.2,568/-	Rs.2,568/-
7.	Damages for mental shock and agony	Rs.10,000/-	Set aside
8.	Pain and suffering	Rs.40,000/-	Rs.40,000/-
9.	Disability	Rs.45,000/-	Rs.45,000/-
10.	Future medical expenses	-	Rs.50,000/-
11.	Loss of amenities	-	Rs.15,000/-
	Total	Rs.1,69,568/- is rounded off to Rs.1,69,600/-	Rs.2,30,318/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,69,600/- is enhanced to Rs.2,30,318/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

8. 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 six 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.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The III Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

2. The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr. S. Sivakumar, advocate sr 70659

+1 CC to Mr. R. Nalliyappan, Advocate sr 70133

C.M.A.No.2976 of 2019

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SV(CO)
SP(06/02/2020)