

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2798 of 2019

Arumugam

... Appellant/Petitioner

Vs.

The Managing Director

Metropolitan Transport Corporation Limited

Anna salai, Chennai-2.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.10.2018 made in M.C.O.P.No.4126 of 2014 on the file of Motor Accident Claims Tribunal, Principal Special Court, Special Court under E.C. and NDPS Court, Chennai-104.

For Appellant : Mr.C.Richard Suresh Kumar

For Respondent : Mr.S.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 17.10.2018 made in M.C.O.P.No.4126 of 2014 on the file of Motor Accident Claims Tribunal, Principal Special Court, Special Court under E.C. and NDPS Court, Chennai-104.

2.The appellant is claimant in M.C.O.P.No.4126 of 2014 on the file of Motor Accident Claims Tribunal, Principal Special Court, Special Court under E.C. and NDPS Court, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.05.2014. 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 to pay a sum of Rs.1,27,000/- 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/claimant contended that the appellant was doing coolie work and was earning a sum of Rs.500/- per day. He has sustained fracture on his left leg foot and underwent surgery. Therefore, he could not do the work as he was doing earlier. The accident is of the year 2014. The Tribunal has granted only a sum of Rs.20,000/- towards loss of income. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning capacity. The Tribunal has not awarded any amount towards medical expenses and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the appellant has not filed any document to prove his avocation and income. In the absence of any evidence, the Tribunal has awarded a sum of Rs.20,000/- towards loss of earning. The appellant has not proved that he suffered functional disability and hence the Tribunal has rightly applied percentage method and awarded a sum of Rs.75,000/- towards 25% disability. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused all the materials available on record.

6.From the materials available on record, it is seen that according to the appellant, he was aged 62 years and was doing coolie work and was earning a sum of Rs.500/- per day. In the absence of any evidence with regard to loss of income, the Tribunal has awarded a sum of Rs.20,000/- towards loss of earning. The accident is of the year 2014 and a sum of Rs.8,000/- is fixed as monthly income of the appellant. Due to the injury, the appellant would not have attended his work atleast for a period of three months. Therefore, the appellant is entitled to a sum of Rs.24,000/- ($\text{Rs.8,000/-} \times 3$) towards loss of income for three months. The appellant examined Dr.Saravanabhavanandam as P.W.2, who assessed the disability of the appellant at 30% and Ex.P10/disability certificate was marked to prove the same. The Tribunal reduced the same to 25% holding that the percentage of disability assessed by the doctor is slightly on the higher side, which is not proper. This Court awards a sum of Rs.90,000/- ($\text{Rs.3,000/-} \times 30\%$) towards permanent disability by fixing 30% disability. According to the appellant, he has taken treatment in the hospital as in-

patient for about 17 days and underwent surgery. The Tribunal has not awarded any amount towards attendant charges. This Court awards a sum of Rs.10,000/- towards attendant charges. The amount awarded by the Tribunal towards extra nourishment is meagre and the same is hereby enhanced to Rs.10,000/-. No amount was granted by the Tribunal towards loss of amenities. This Court awards a sum of Rs.10,000/- towards loss of amenities. The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same are 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.	Loss of income	20,000	24,000	Enhanced
2.	Transport to hospital	3,000	3,000	Confirmed
3.	Extra nourishment	3,000	10,000	Enhanced
4.	Damages to clothing and articles	1,000	1,000	Confirmed
5.	Attendant Charges	-	10,000	Granted
6.	Loss of amenities	-	10,000	Granted
7.	Pain and suffering	25,000	25,000	Confirmed
8.	Permanent disability	75,000	90,000	Enhanced
	Total	1,27,000	1,73,000	Enhanced by Rs.46,000/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,27,000/- is hereby enhanced to Rs.1,73,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant shall 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 twelve 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. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Principal Special Court,
Special Court under E.C. and NDPS Court,
Chennai-104.

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

+1cc to Mr.C.Richard Suresh Kumar, Advocate Sr.100257
+1cc to Mr.S.Sivakumar, Advocate Sr.101075

C.M.A.No.2798 of 2019

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