

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3539 of 2019

Santhoshkumar

.. Appellant/Petitioner

Vs.

The Managing Director,  
Tamil Nadu State Transport Corporation (VPM),  
Limited, Villupuram. .. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.11.2018 made in M.C.O.P.No.7876 of 2014 on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Special Court under E.C & NDPS Act, Chennai 104.

For Appellant : Mr.Richard Suresh Kumar

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 09.11.2018 made in M.C.O.P.No.7876 of 2014, on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Special Court under E.C & NDPS Act, Chennai 104.

2.The appellant is the claimant in M.C.O.P.No.7876 of 2014 on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Special Court under E.C & NDPS Act, Chennai 104. He filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.10.2014.

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.8,03,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant was working as a electrician-cum-plumber in Madambakkam Panchayat Union Office and was also doing private electrical contract work and was earning a sum of Rs.1,000/- per day. Due to the accident, the appellant sustained bilateral bicolunar acetabular fracture and greivous injuries all over his body. He took treatment as in-patient in the hospital from 20.10.2014 to 13.03.2015 on nine different spells and underwent nine surgeries. Due to the fracture in the hip bone and severe injuries in the abdomen, he is unable to pass urine and stand for a long time. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning capacity. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6. In support of his contention, the learned counsel relied on the judgment of the Hon'ble Apex Court reported in 2019 (1) TNMAC 5 (SC) [Anil Kumar Vs. Branch Manager, National Insurance Company Limited and another] wherein at paragraph Nos.12 and 15, it has been held as follows:

"12. First, the Appellant (Claimant) was a young unmarried boy of 25 years at the time of accident and did not suffer with any kind of ailment; Second, the Appellant had sustained fracture of both pelvic bones with rupture of Urethra and Abdomen injuries for which he underwent four operations and suffered Partial but Permanent Disability in his body which reduced his movement capacity to a larger extent; Third, the Appellant due to Partial but Permanent Disability also lost his job; Fourth, he spent a substantial sum for his Medical treatment; and lastly, since the Appellant is not still able to move freely due to disabilities suffered by him, he is entitled to be suitably compensated by awarding him monetary Compensation.

.....

15. In the light of the foregoing discussion and the grounds mentioned above, which found acceptance to the Tribunal, we are of the considered opinion that the Appellant is entitled for a further sum of Rs.5,00,000/- in lumpsum in addition to what

has been awarded by the Tribunal i.e.,  
Rs.3,43,000/-."

Per contra, Mr.K.J.Siva Kumar, learned counsel appearing for the respondent/ Transport Corporation contended that the appellant has failed to prove that he suffered functional disability. In the absence of any material evidence, the Tribunal applied percentage method and granted compensation. The appellant has not filed any document to prove his avocation and income. Considering the period of treatment and materials on records, the Tribunal has granted a sum of Rs.75,000/- towards loss of earnings. In view of the fact that the Tribunal has given compensation under different heads for loss of earning power and disability, the appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

7.From the materials on records, it is seen that the appellant has contended that he suffered urethraol problem and femur fracture in both legs. PW.2/Doctor has assessed the disability of the appellant as 50%. The Tribunal has reduced the disability to 40%, on the ground that the disability assessed by PW.2/Doctor is slightly on the higher side and awarded a sum of Rs.1,20,000/- (40% x Rs.3,000/-) towards permanent disability by awarding Rs.3,000/- per percentage. In addition to that, the Tribunal has awarded Rs.75,000/- towards loss of earnings and Rs.1,00,000/- towards loss of earning power and therefore, the same are liable to be set aside and they are hereby set aside. In view of the principles laid down in the decision referred to above reported in 2019 (1) TNMAC 5 (SC) [Anil Kumar Vs. Branch Manager, National Insurance Company Limited and another], the appellant is entitled for a further sum of Rs.5,00,000/- in lumpsum in addition to the amounts awarded by the Tribunal. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same 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 on earnings  | 75,000/-                        | -                                 | set aside                              |
| 2.   | Transportation    | 10,000/-                        | 10,000/-                          | confirmed                              |
| 3.   | Extra nourishment | 10,000/-                        | 10,000/-                          | confirmed                              |
| 4.   | Damage to clothes | 2,000/-                         | 2,000/-                           | confirmed                              |
| 5.   | Attender charges  | 25,000/-                        | 25,000/-                          | confirmed                              |
| 6.   | Medical expenses  | 4,11,000/-                      | 4,11,000/-                        | confirmed                              |

| S.No | Description           | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|------|-----------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 7.   | Pain and sufferings   | 50,000/-                        | 50,000/-                          | confirmed                              |
| 8.   | Disability            | 1,20,000/-                      | 1,20,000/-                        | confirmed                              |
| 9.   | Loss of earning power | 1,00,000/-                      | -                                 | Set aside                              |
| 10.  | Lumpsum               |                                 | 5,00,000/-                        | granted                                |
|      | Total                 | 8,03,000/-                      | 11,28,000/-                       | Enhanced by Rs.3,25,000/-              |

8. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.8,03,000/- is enhanced to Rs.11,28,000/- along with interest and costs. The respondent is directed to deposit the enhanced award amount along with interest and costs, now determined by this Court, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.7876 of 2014. 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.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Principal Special Judge,  
The Special Court under E.C & NDPS Act,  
(Motor Accident Claims Tribunal),  
Chennai 104.

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

+1cc to Mr.C.Richard Suresh Kumar, Advocate SR.105646  
+1cc to Mr.K.J.Sivakumar, Advocate SR.105743

C.M.A.No.3539 of 2019

LN(CO)  
CB(08/04/2021)



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