

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3136 of 2018

Sivanandham

.. Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
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 07.07.2017 made in M.C.O.P.No.1410 of 2012 on the file of the Motor Accidents Claims Tribunal, V Judge, small Causes Court, Chennai.

For Appellant : Mrs.Ramya V.Rao
For Respondent : Mr.S.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed seeking enhancement of compensation granted by the Tribunal in the award dated 07.07.2017 made in M.C.O.P.No.1410 of 2012 on the file of the Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1410 of 2012 on the file of the Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.02.2009. 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 and directed the respondent-Transport Corporation to pay a sum of Rs.3,70,500/- as compensation to the appellant/claimant. Against the said award dated 07.07.2017 made in M.C.O.P.No.1410 of 2012, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the appellant was aged 14 years at the time of accident, he suffered 50% permanent disability and his entire life is

affected due to the injuries sustained by him in the accident. The Tribunal ought to have applied multiplier method for arriving just compensation towards disability. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the appellant has not suffered any functional disability. The Tribunal considering the evidence of PW2-Doctor, reduced 5% disability as disability may vary from one Doctor to another. The Tribunal has erroneously awarded excessive compensation under the heads of mental agony to both the appellant as well as his parents and hence, the appellant is not entitled for any 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 the appellant has suffered fracture of Tibia and Fibula in the accident. He was admitted in the hospital as in-patient from 20.02.2009 to 15.05.2009 in Government Hospital, Royapettah and underwent surgery. PW2-Doctor has certified the disability suffered by the appellant at 50% and has given details of injuries. The Tribunal without any reason has reduced the disability from 50% to 45% and granted compensation at the rate of Rs.3,000/- for 45% disability. The appellant is entitled for compensation for 50% disability and the appellant has not pointed out that he suffered functional disability and he is totally immobilised. In view of the same, the percentage method adopted by the Tribunal is correct. The appellant is entitled to compensation for 50% disability at the rate of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is arrived at Rs.1,50,000/- (Rs.3,000/- X 50%). Considering the nature of injuries and age of the appellant, a sum of Rs.40,000/- and Rs.20,000/- awarded by the Tribunal towards pain and suffering and extra nourishment are hereby enhanced to Rs.75,000/- and Rs.30,000/- respectively. The amounts awarded by the Tribunal under different 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
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1.	Disability	1,35,000	1,50,000	Enhanced
2.	Pain and Suffering	40,000	75,000	Enhanced
3.	Transport to Hospital	15,000	15,000	Confirmed
4.	Extra nourishment	20,000	30,000	Enhanced
5.	Medical Expenses	5,500	5,500	Confirmed
6.	Mental Agony to appellant	25,000	25,000	Confirmed
7.	Mental Agony to parents	25,000	25,000	Confirmed
8.	Future Medical Expenses	10,000	10,000	Confirmed
9.	Loss of Amenities	25,000	25,000	Confirmed
10.	Loss of Education	50,000	50,000	Confirmed
11.	Attendant Charges	20,000	20,000	Confirmed
	Total	3,70,500	4,30,500	Enhanced by Rs.60,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,70,500/- is hereby enhanced to Rs.4,30,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The respondent is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, 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.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

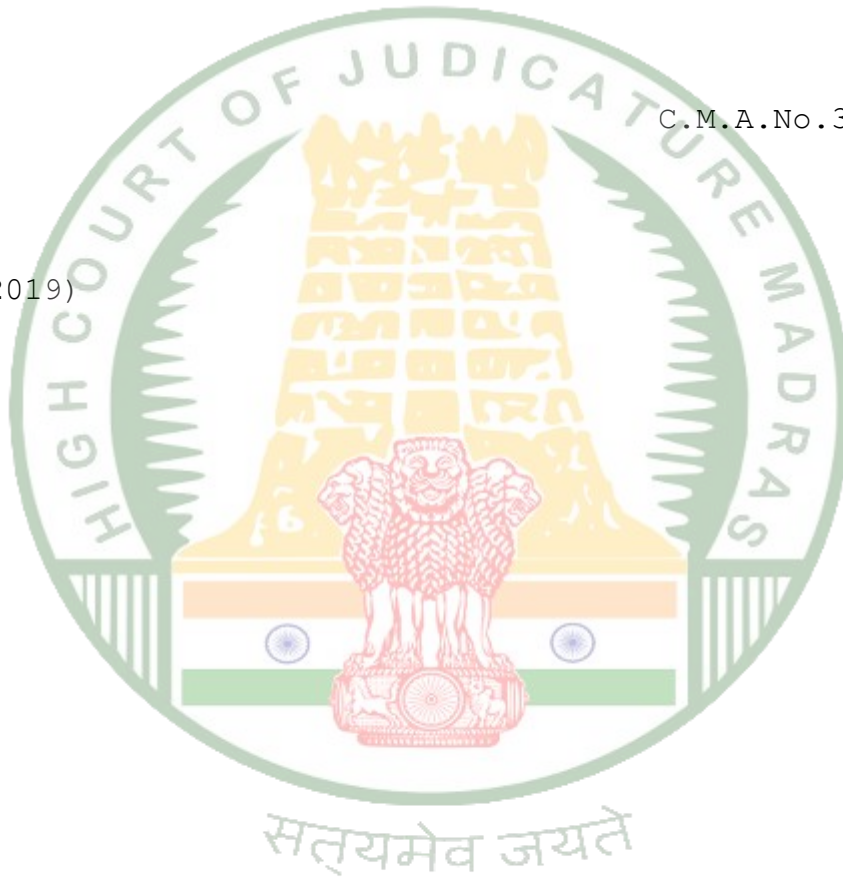
kj/rst
To

1.The V Judge
The Motor Accidents Claims Tribunal
Small Causes Court, Chennai.

+1 CC to Mr.A.N.Viswanatha Rao, Advocate sr 5543.
+1 CC to Mr.S.Sivakumar, Advocate sr 5655.

C.M.A.No.3136 of 2018

RSI (CO)
SP(03/06/2019)



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