

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1113 of 2009

E. Mohan Babu

.. Appellant/Claimant

Vs.

1.Tamil Nadu State Transport Corporation  
Ltd., rep by its Managing Director,  
Virudhunagar.

2.P.T. Mahalingam  
(set exparte in the Trial Court)

3.The Oriental Insurance Co., Ltd.,  
Regional Office, No.8, Esplanade Road,  
Chennai 600 108. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.12.2008 made in MACT.O.P.No. 780 of 2003 on the file of the Fast Track Court-I, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.P.T. Salim Fathima  
for Mr.M.Swamikannu

For R1 : Mr. K.J. Sivakumar

For R3 : Mr.J. Chandran

For R2 : Ex-parte

J U D G M E N T  
WEB COPY

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 10.12.2008 made in MACT.O.P.No. 780 of 2003 on the file of the Fast Track Court-I, Motor Accidents Claims Tribunal, Chennai.

2.The appellant is claimant in M.C.O.P.No.780 of 2003 on the file of Motor Accidents Claims Tribunal, Fast Track Court-I,

Chennai.. He filed the said claim petition claiming a sum of Rs.23,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.11.2002.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the drivers of both the buses belonging to the 1<sup>st</sup> and 2<sup>nd</sup> respondents and awarded a sum of Rs.2,35,114/- as compensation to the appellant and directed the respondents 1 and 3 to pay 50% each of the award amount.

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/claimant contended that due to the accident, the appellant sustained multiple compound and comminuted fracture in both bones in right leg below knee and fracture in right knee and ankle for which he was immobilized for about one year. To prove the same, P.W.2/Doctor examined the appellant and assessed disability of the appellant as 35%. The Tribunal without giving any reason reduced the percentage of disability to 30%. The Tribunal failed to award compensation towards loss of amenities and attendant charges. The amounts awarded by the Tribunal towards pain and suffering, transportation and extra nourishment are meagre and prayed for enhancement of compensation.

6.Per Contra, the learned counsel appearing for the first respondent/Transport Corporation contended that the accident occurred only due to the rash and negligent driving by the driver of the 2<sup>nd</sup> respondent, driver-cum owner of the bus and hence the first respondent is not liable to pay any compensation to the appellant. The appellant has not produced any document to prove his avocation and income. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. The learned counsel appearing for the third respondent/Insurance Company contended that the accident occurred due to the rash and negligent driving by the driver of the first respondent bus and hence the 3<sup>rd</sup> respondent is not liable to pay any compensation to the appellant. He would further contend that the injuries sustained by the appellant in the accident are only simple in nature and the compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1<sup>st</sup> and 3<sup>rd</sup> respondent and perused all the materials available on record.

9.It is the contention of the appellant that at the time of accident, he was earning a sum of Rs.3,200/- per month by working as a Service Engineer in M/s. A.R.M. Limited and marked Ex.P.11/Salary Certificate, to prove the same. The Tribunal fixed a meagre sum of Rs.2,346/- as monthly income of the appellant and awarded a sum of Rs.7,038/- (Rs.2,346/- X 3 months) towards loss of income for three months. P.W.2/Dr.Amarnath Sowli admitted that he had not examined the appellant and given any treatment to the appellant and also admitted the possibility of fluctuation of 5% disability from one Doctor to another Doctor. The Doctor examined the patient after several years and assessed the disability of the appellant at 30%. As the Doctor has deposed that there will a fluctuation of 5% from one Doctor to another, the appellant is entitled for disability at 35%. Considering the age of

the injured the proper multiplier to be adopted is 18 and the same is applied and the compensation awarded by the Tribunal towards loss of future income is modified to Rs.1,77,357.60/- (Rs.2,346 x 12 x 18 x 35/100)

10.Considering the nature of injuries and period of treatment the amounts awarded towards the head Transportation charges, Extra Nourishment and Transportation are enhanced to Rs.10,000/-, Rs.5,000/ and Rs.5,000/- respectively. The Tribunal has not awarded any compensation towards loss of amenities and damages to clothes. Considering the nature of injuries a sum of Rs.10,000/- and Rs.500/- are awarded towards loss of amenities and damages to clothes respectively. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, 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 or reduced |
|------|---------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.   | Pain and sufferings | 5,000                           | 10,000                            | Enhanced                                          |
| 2.   | Transportation      | 3,000                           | 5,000                             | Enhanced                                          |
| 3.   | Extra nourishment   | 3,000                           | 5,000                             | Enhanced                                          |

|    |                       |          |                                                   |                         |
|----|-----------------------|----------|---------------------------------------------------|-------------------------|
| 4. | Medical Expenses      | 65,056   | 65,056                                            | confirmed               |
| 5. | Loss of income        | 7,038    | 7,038                                             | Enhanced                |
| 6. | Loss of future income | 1,52,020 | 1,77,358<br>(1,77,357.60 rounded off to 1,77,358) | Enhanced                |
| 7. | Loss of amenities     | -        | 10,000                                            | Granted                 |
|    | Damage to clothes     | -        | 500                                               | Granted                 |
|    | Total                 | 2,35,114 | 2,79,952                                          | Enhanced by Rs.44,838/- |

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,35,114/- is hereby enhanced to Rs.2,79,952/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 1<sup>st</sup> respondent/Transport Corporation and the 3<sup>rd</sup> respondent/Insurance Company are directed to deposit 50% each of 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/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(CCC)

//True Copy// Sub Assistant Registrar

smn

To

1.The Additional District and Sessions Judge,  
Fast Track Court-I,  
Motor Accidents Claims Tribunal, Chennai.

2.The Section Officer

V.R.Section,High Court, Chennai.

+1cc to Mr.M.Swamikannu, Advocate SR.No. 22011

+1cc to Mr.K.J.Sivakumar, Advocate SR.No. 22209

C.M.A.No.1113 of 2009

RSV CO A.SK(11.03.2021)