

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1251 of 2013

A. Seenivasan ... Appellant /Petitioner

Versus

Metropolitan Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavan Salai,
Chennai - 2. Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 21.06.2012 in MCOP No.188 of 2007 on the file of the Motor Accidents Claims Tribunal / VI Judge, Court of Small Causes, Chennai.

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

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 21.06.2012 passed by the Motor Accidents Claims Tribunal (VI Court of Small causes, Chennai) in MCOP No.188 of 2007.

2. The appellant / claimant sustained injuries on 05.11.2005 as a result of an accident caused by a bus owned by the respondent / Transport Corporation. He preferred a claim before the Motor Accidents Claims Tribunal (VI Court of Small Causes, Chennai) seeking compensation of Rs.5,00,000/- for the injuries sustained by him, as a result of the said accident.

3. The Motor Accidents Claims Tribunal (VI Court of Small Causes, Chennai) by its award dated 21.06.2012 directed the respondent / Transport Corporation to pay the appellant / claimant a sum of Rs.97,832/- together with interests and costs.

4.The details of the compensation awarded under the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income	7,000
Transportation	5,000
Extra nourishment	3,000
Medical expenses	2,832
Pain and suffering	20,000
Permanent disability	60,000
Total	97,832

5. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has filed this appeal seeking for enhancement.

6. Heard Ms. Ramya V. Rao, learned counsel for the appellant and Mr.S.Sivakumar, learned counsel for the respondent / Transport Corporation.

7. This Court has perused the materials and evidence available on record before the Tribunal.

8. According to the appellant, he was a Mason and earning Rs.200/- per day and due to the injuries caused by a bus owned by the respondent / Transport corporation, he had sustained fracture of head of fibula right, fracture of left Phonimal Phalanx and multiple injuries all over his body. He was treated as an inpatient from 05.11.05 to 12.11.05 and treated conservatively with AK slab application and thereafter for a period of 3 days as an outpatient. According to him, the Doctor had assessed the disability as per Ex.P6 at 30% and the Tribunal has awarded the disability compensation for Rs.60,000/-, calculated on the basis of Rs.2,000/- per percentage. It is his case that he has taken further treatment for a period of 6 days on various dates, as seen from Medical

prescriptions (Ex.P2) Hence, according to him, the compensation awarded under the head loss of income by the Tribunal is too low and is not a just compensation and therefore it needs to be enhanced.

9. The adverse findings of negligence against the Driver of the bus, who caused the accident which resulted in injuries sustained by the appellant / claimant has now attained finality, since no appeal has been filed by the respondent / Transport Corporation. The only question that arises for consideration in this appeal is whether the compensation awarded by the Tribunal to the appellant / claimant is a just compensation or not and whether the compensation needs to be enhanced.

10. Before the Tribunal, the appellant / claimant has filed seven documents, which were marked as Ex.P1 to Ex.P7 and two witnesses were examined viz, the appellant himself as PW1 and the Doctor, who examined him as PW2. On the side of the respondent / Transport Corporation, one witness was examined but no document was filed.

11. The age and avocation of the appellant / claimant has not been disputed by the respondent / Transport Corporation as seen from the materials and evidence available on record before the Tribunal.

12. The nature of injuries sustained by the appellant / claimant as well as the period of his hospitalisation due to the said injuries have also not been disputed by the respondent / Transport Corporation before the Tribunal. The discharge summary (Ex.P1) reveals the fact that the appellant / claimant was hospitalised for seven days and the same was also not disputed by the respondent / Transport Corporation before the Tribunal. The Tribunal has assessed the disability of the appellant/claimant at 30%, as seen from Ex.P6-Disability certificate. The Doctor who examined the appellant / claimant has also been examined as a witness (PW2). The appellant / claimant in his claim petition has claimed that as a Mason, he was earning Rs.200/- per day, but the Tribunal has assessed the Loss of income under the impugned award only for a period of two months and has awarded Rs.7,000/- based on the notional monthly income of Rs.3,500/- assessed by the Tribunal. Due to the injuries sustained by him, as a result of the accident, he finds difficulty in climbing stairs, using Indian toilet and experiencing headache and giddiness, which will affect him from doing his regular work as a Mason. After giving due consideration to the nature of the injuries sustained by the

appellant / claimant, this Court is of the considered view that the Tribunal ought to have awarded a higher compensation to the appellant / claimant towards loss of income. This Court is of the considered view that the monthly notional income of the appellant has to be fixed at Rs.5,000/- and certainly for a period of 6 months, the appellant / claimant would have suffered loss of income due to his inability to do his regular work. Accordingly, a sum of Rs.30,000/- (Rs.5,000 x 6) is awarded as compensation to the appellant / claimant towards loss of income, instead of Rs.7,000/- awarded by the Tribunal for a period of two months only.

13. The compensation awarded by the Tribunal under the impugned award towards Extra nourishment is too low and this Court is of the considered view that the Tribunal ought to have awarded Rs.5,000/- under this head. Accordingly, Extra nourishment is enhanced from Rs.3,000/- to Rs.5,000/-.

14. The Tribunal under the impugned award failed to award any compensation towards Attender charges and loss of amenities. In the considered view of this Court, the Tribunal ought to have considered the nature of injuries sustained by the appellant / claimant and hence, this Court awards a sum of Rs.10,000/- each under the said two heads (Attender charges and loss of amenities).

15. The compensation awarded by the Tribunal under various heads viz., Transport, Medical expenses, pain and suffering and permanent disability are also a reasonable sum and therefore, there is no scope for interference as regards those heads of compensation.

16. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income *Rs.3,500/- x 2 Rs.5,000 x 6	7,000	30,000 #
Transportation	5,000	5,000
Extra nourishment	3,000	5,000
Medical expenses	2,832	2832
Pain and suffering	20,000	20,000

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Permanent disability	60,000	60,000
Attender charges	-	10,000
Loss of amenities	-	10,000
Total	97,832	1,42,832

17. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.97,832 to Rs.1,42,832/- as indicated above. No costs.

18. The respondent / Transport Corporation is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.188 of 2007, on the file of the Motor Accidents Claims Tribunal, (VI Judge, Court of Small Causes, Chennai), within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant / claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellant before receiving the copy of this Judgment.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The VI Judge,
(Motor Accidents Claims Tribunal)
VI Court of Small Causes, Chennai.

C.M.A.No.1251 of 2013

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