

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1383 of 2011

G.Munirathinam

.. Appellant /Claimant

Vs.

State Express Transport Corporation Limited
(Tamil Nadu Division-I)

Represented by its Managing Director

Pallavan 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 25.01.2008 made in M.C.O.P.No.869 of 2002 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Ms.K.Vasanthamala
for Mr.UM.Ravichandran

For Respondent : Mr.K.Kathiresan

J U D G M E N T

The matter is heard through "Video Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 25.01.2008 made in M.C.O.P.No.869 of 2002 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.869 of 2002 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.11.2001.

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 and directed the respondent/Transport Corporation to pay a sum of Rs.65,700/- 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 Tribunal awarded a sum of Rs.65,700/- as compensation against the claim of Rs.3,00,000/-. The amounts awarded by the Tribunal towards loss of income and extra nourishment are meagre. The appellant claimed a sum of Rs.10,000/- towards nursing expenses, Rs.60,000/- towards loss of earning power, Rs.50,000/- towards loss of amenities and dis-figuration but the Tribunal failed to award any amount under these heads. The amount awarded by the Tribunal towards disability is meagre. The Tribunal ought to have awarded a sum of Rs.1,10,000/- towards disability and ought to have awarded compensation towards mental agony, loss of amenities, discomfort, frustration and mental stress and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that P.W.3 and P.W.4 Doctors are not neuro or ortho specialists. Though the assessment of 55% disability for skin grafting by P.W.3 is without any basis and the Tribunal has rightly rejected the disability certificate, 30% disability assessed by P.W.4/Doctor was accepted by the Tribunal and a sum of Rs.30,000/- was awarded towards disability. The accident has occurred on 08.11.2001. The amount awarded by the Tribunal towards disability and the total compensation awarded by the Tribunal are not meagre. The appellant is not entitled to any compensation more than Rs.30,000/- towards disability. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent/Transport Corporation and perused the entire materials on record.

8.It is the contention of the appellant that due to the injuries suffered by him in the accident, he has taken treatment in the hospital as in-patient for 18 days. The appellant claimed a sum of Rs.10,000/- towards nursing expenses. The Tribunal

rejected the same on the ground that he has not filed any document to prove the same. The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken by the appellant, he is entitled to Rs.5,000/- towards attendant charges.

8(i) The appellant examined P.W.3 and P.W.4/Doctors to substantiate the contention that he has suffered disability in the accident. P.W.3/Doctor assessed the disability as 55% for skin grafting treatment taken by the appellant. The appellant produced Ex.P12/Discharge summary and claimed that he has taken treatment for skin grafting. The skin grafting treatment taken by the appellant will not cause any disability. The Tribunal considering this fact, has rejected the evidence of P.W.3/Doctor. There is no error in the finding of the Tribunal rejecting the disability assessed by P.W.3/Doctor. P.W.4/Doctor has examined the appellant and assessed the disability of the appellant for left zygomatic fracture and contusion in both the eyes as 30%. The Tribunal considering the nature of injuries sustained by the appellant and treatment taken by him, accepted the evidence of P.W.4/Doctor and awarded a sum of Rs.30,000/- towards disability. The contention of the appellant that the Tribunal ought to have awarded a sum of Rs.1,10,000/- towards disability is without any basis. A sum of Rs.30,000/- awarded by the Tribunal towards disability is based on the evidence and there is no reason to enhance the said amount.

8(ii) The appellant contended that he was running a provision store and was earning a sum of Rs.10,000/- per month. He failed to substantiate the said contention. In the absence of any material evidence with regard to the avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income and awarded a sum of Rs.9,000/- (Rs.4,500/- X 2) towards loss of income for two months. The accident is of the year 2001 and the notional income fixed by the Tribunal is not meagre. Due to disability and injuries, the appellant would not have worked at least for five months. The amount of Rs.9,000/- awarded by the Tribunal towards loss of income is meagre and hence, the same is hereby enhanced to Rs.22,500/- (Rs.4,500/- X 5). The Tribunal has not awarded any amount towards loss of amenities and damage to clothes and hence, Rs.10,000/- and Rs.500/- are awarded towards loss of amenities and damage to clothes respectively. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and hence, the same are hereby enhanced to Rs.5,000/- each. The amounts awarded by the Tribunal under all other heads are just and reasonable and

hence, 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 or reduced
1.	Loss of income	9,000	22,500	Enhanced
2.	Transportation	1,000	5,000	Enhanced
3.	Extra nourishment	1,000	5,000	Enhanced
4.	Medical expenses	19,691.90	19,691.90	Confirmed
5.	Pain and suffering	5,000	5,000	Confirmed
6.	Disability	30,000	30,000	Confirmed
7.	Attendant charges	-	5,000	Granted
8.	Loss of amenities	-	10,000	Granted
9.	Damage to clothes	-	500	Granted
	Total	65,691.90 rounded off to 65,700	1,02,691.90 rounded off to 1,02,700	Enhanced by Rs.37,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.65,700/- is hereby enhanced to Rs.1,02,700/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to 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 is

permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

kj

To

1.IV Judge

The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer

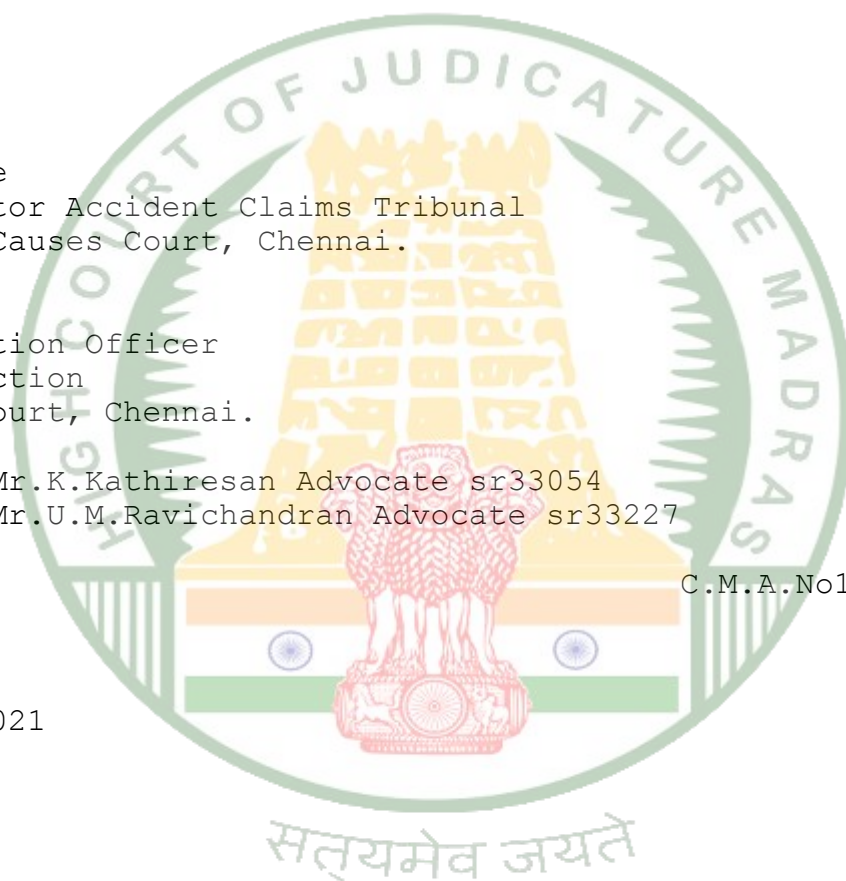
V.R.Section
High Court, Chennai.

+1 cc to Mr.K.Kathiresan Advocate sr33054

+1 cc to Mr.U.M.Ravichandran Advocate sr33227

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