

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1455 of 2013

K.Neethiraja

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamilnadu State Transport Corpn.,
(Kumbakonam) Limited,
Railway Station New Road,
Kumbakonam-612 001.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.02.2012 made in M.C.O.P.No.4160 of 2009 on the file of Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai.

For Appellant : Mr.S.Gowsik Sundar

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 14.02.2012 made in M.C.O.P.No.4160 of 2009 on the file of Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4160 of 2009 on the file of Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 15.01.2009.

3.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 TNSTC bus belonging to the respondent and directed the respondent/Transport Corporation to pay a sum of Rs.60,500/- as compensation to the appellant.

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

5. The learned counsel appearing for the appellant contended that the appellant suffered Abrasion with L.S Strain (L.S Spine) and proved the same by examining P.W.4-Doctor who assessed that appellant suffered 35% disability. The respondents have not let in any contra evidence. In the absence of contra evidence, the Tribunal erroneously reduced the percentage of disability from 35% to 30% and awarded meagre amount of Rs.37,500/- for disability. Due to the injuries, the appellant could not do any work as he was doing earlier. The Tribunal without considering the same failed to award compensation for loss of earning. The amounts awarded by the Tribunal for Transportation, extra nourishment and pain and suffering are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.D.Venkatachalam, learned counsel appearing for the respondent/Transport Corporation contended that P.W.4-Doctor is not the Doctor who treated the appellant. The Tribunal reduced the percentage of disability from 35% to 30% as the assessment of disability by P.W.4/Doctor is on higher side. The appellant has not produced any document to prove his avocation and income to prove that he lost his income during the treatment period and loss of earning power. In such circumstances, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant and awarded a sum of Rs.5,000/- as compensation towards loss of income for one month and adopted percentage method and granted compensation. 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 sole respondent and perused the materials available on record.

8. It is the contention of the appellant that in the accident he suffered injuries and he took treatment as out-patient in Government Head Quarters Hospital, Villupuram and produced Ex.P3-OP Chit. According to appellant, he suffered L4 L5 vertebra and facing difficulty in bending, walking and carrying weight and appellant is wearing a spinal belt. The appellant has examined P.W.4-Doctor who deposed about nature of disability suffered by appellant and certified that disability of appellant is 35%. The respondents did not let in any contra evidence to disprove the evidence of P.W.4-Doctor and Ex.P23-disability certificate. The Tribunal reduced the disability to 30%. The reason given by the Tribunal for reducing the disability is not

correct. The appellant is entitled to compensation for 35% disability. The accident is of the year 2009 and appellant is entitled to compensation at Rs.2,000/- per percentage of disability. A sum of Rs.70,000/- is granted for disability.

9. According to the appellant, he was working as a driver and was earning a sum of Rs.300/- per day. The appellant failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant. The accident occurred in the year 2009 and the notional income fixed by the Tribunal is meagre and monthly income is fixed at Rs.6,000/- per month. The Tribunal has awarded a meagre sum of Rs.5,000/- towards loss of income for one month. Due to the injuries and period of treatment taken by the appellant, he would not have attended his work atleast for a period of three months. Hence, a sum of Rs.18,000/- (Rs.6,000/- X 3 months) is awarded towards loss of income for three months. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and hence, the same are enhanced to Rs.5,000/- each. The Tribunal has not awarded any amount towards loss of amenities and damage to clothes. A sum of Rs.10,000/- and Rs.1,000/- is awarded towards loss of amenities and damage to clothes respectively. The amounts awarded by the Tribunal under other 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 or reduced
1.	Loss of income	5,000	18,000	Enhanced
2.	Transportation	2,000	5,000	Enhanced
3.	Extra nourishment	3,000	5,000	Enhanced
4.	Damage to clothes	-	1,000	Granted
5.	Medical expenses	2,876	2,876	Confirmed
6.	Pain and sufferings	10,000	10,000	Confirmed
7.	Disability	37,500	70,000	Enhanced
8.	Loss of amenities	-	10,000	Granted
	Total	Rs.60,376/- rounded off to Rs.60,500/-	Rs.1,21,876/-	Enhanced by Rs.61,376/-

10. In the result, this Civil Miscellaneous Appeal is

partly allowed and the compensation awarded by the Tribunal at Rs.60,500/- is hereby enhanced to Rs.1,21,876/- 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 the 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.4160 of 2009 on the file of Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai. 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 by filing separate petition before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

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

2.The Section Officer

V.R.Section

High Court, Chennai. सत्यमेव जयते

+1 cc to M/s.A.Shanmugaraj, Advocate Sr.No. 19836

+1 cc to M/s.D.Venkadachalam, Advocate Sr.No. 19106

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KJ(CO)

RMP(29/12/2020)