

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1917 of 2011

Munusamy

... Appellant /Petitioner

Vs.

The Managing Director,  
Tamilnadu State Transport Corporation Ltd.,  
No. 3/137, Salamedu,  
Villupuram 605 602.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 04.11.2009, made in M.C.O.P. No. 29 of 2009, on the file of the Additional District Judge, Fast Tract Court No.II, (Motor Accident Claims Tribunal), Tindivanam.

For Appellant : Mr. T. Dhanyakumar

For Respondent : Mr. K.J. Sivakumar

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 04.11.2009, made in M.C.O.P. No. 29 of 2009, on the file of the Additional District Judge, Fast Tract Court No.II, (Motor Accident Claims Tribunal), Tindivanam.

2.The appellant-claimant filed M.C.O.P. No. 29 of 2009, on the file of the Additional District Judge, Fast Tract Court No.II, (Motor Accident Claims Tribunal), Tindivanam, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.11.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, in the absence of any rebutting evidence against the claim of the appellant, held that the respondent-Transport Corporation Bus is liable to pay compensation to the

appellant and directed the respondent to pay a sum of Rs.95,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 04.11.2009, made in M.C.O.P. No. 29 of 2009, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the appellant sustained multiple injuries and fracture on both legs and hip. The appellant has examined P.W.3 - Doctor and filed Exs.P4 to P8 - documents to prove the nature of injuries, disability and treatment taken. P.W.3 - Doctor has assessed that the appellant suffered 53% disability and issued Ex.P7 - Disability Certificate to that effect. The Tribunal has not considered the same and erred in awarding only meagre amount as compensation and prayed for enhancement of the same.

6. Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal has considered all the materials on record in proper perspective and awarded compensation under different heads for injury, treatment, conveyance and nutritious food and pain and suffering. Hence, the appellant is not entitled to any compensation towards disability separately. The total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the respondent and perused the materials available on record.

8. It is the contention of the appellant that in the accident, he suffered multiple injuries with fracture on both the legs and hip and has taken treatment as in-patient in Stanley Medical College Hospital, Chennai from 13.02.2008 to 14.03.2008 and 12.11.2007 to 11.02.2008 and underwent surgery on 13.12.2007. P.W.3- Doctor has assessed the percentage of disability suffered by the appellant as 53%. The respondent did not let in any evidence to disprove the evidence of P.W.3 - Doctor and disability certificate marked as Ex.P7. The Tribunal having considered all the documents and evidence of P.W.3 - Doctor and held that the appellant sustained fracture in both bones of right leg which are malunited after treatment, found with bent, skin grafting has been done and there is fracture of the meta tarsal in right leg, has not awarded any amount towards disability, but has granted only Rs.30,000/- towards injury, Rs.10,000/- towards treatment and Rs.5,000/- towards conveyance and nutritious food. The same are erroneous and hence, set

aside. The appellant is entitled to compensation towards disability at the rate of Rs.2,000/- per percentage for 53% disability. Hence, a sum of Rs.1,06,000/- [Rs.2,000/- x 53% disability] is awarded towards disability. Considering the period of treatment and nature of injuries sustained by the appellant, he is entitled to a sum of Rs.20,000/- towards attendant charges, Rs.20,000/- towards extra nourishment, Rs.10,000/- towards loss of amenities and Rs.1,000/- towards damage to clothes. The Tribunal has awarded excessive amount of Rs.50,000/- towards pain and suffering and hence, the same is reduced to Rs.30,000/-.

9.The appellant has contended that at the time of accident, he was working as a Mason and Agriculturist and was earning a sum of Rs.5,000/- per month. He failed to prove the same. The accident is of the year 2007. In the absence of any material evidence to prove the avocation and income, a sum of Rs.4,000/- per month is fixed as notional income of the appellant. Due to the injuries and treatment taken, the appellant would not have worked atleast for a period of 4 months. Hence, a sum of Rs.16,000/- [Rs.4,000/- x 4 months] is awarded towards loss of income to the appellant. 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 |
|-------|--------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Injuries                       | 30,000/-                        | -                                 | Set aside                              |
| 2.    | Disability                     | -                               | 1,06,000/-                        | Granted                                |
| 3.    | Conveyance and nutritious food | 5,000/-                         | -                                 | Set aside                              |
| 4.    | Pain and sufferings            | 50,000/-                        | 30,000/-                          | Reduced                                |
| 5.    | Treatment                      | 10,000/-                        | -                                 | Set aside                              |
| 6.    | Loss of income                 | -                               | 16,000/-                          | Granted                                |
| 7.    | Extra nourishment              | -                               | 20,000/-                          | Granted                                |
| 8.    | Loss of amenities              | -                               | 10,000/-                          | Granted                                |
| 9.    | Attendant charges              | -                               | 20,000/-                          | Granted                                |
| 10.   | Damage to clothes              | -                               | 1,000/-                           | Granted                                |

|       |          |            |                                  |
|-------|----------|------------|----------------------------------|
| Total | 95,000/- | 2,03,000/- | Enhanced by<br>Rs.1,08,000<br>/- |
|-------|----------|------------|----------------------------------|

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.95,000/- is enhanced to Rs.2,03,000/- along with interest and costs. The respondent-Transport Corporation is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 29 of 2009. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.1,08,000/-, enhanced by this Court as per the order of this Court dated 29.06.2011, made in M.P. No. 1 of 2011 in C.M.A. SR. 15744 of 2011. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,08,000/-. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,  
Fast Track Court No.II,  
(Motor Accident Claims Tribunal),  
Tindivanam.

2. The Section Officer,  
V.R Section,  
High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate Sr.23863  
+1cc to Mr.T.Dhanyakumar, Advocate Sr.23889

C.M.A. No. 1917 of 2011

mr[co]  
srg 16/12/2020