

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1636 of 2013

L.Paneer Selvam @ Selvam

.. Appellant/Petitioner

Vs.

Tamil Nadu State Transport Corporation Ltd.,
Rep. by its Managing Director,
Villupuram Division, No.3/137,
Salamedu Post, Pin 605 602.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.02.2013 made in M.C.O.P.No.1539 of 2012 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.K.J.Sivakumar

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 04.02.2013 made in M.C.O.P.No.1539 of 2012 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1539 of 2012 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.04.2011.

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 bus belonging to the respondent/Transport Corporation and directed the

respondent/Transport Corporation to pay a sum of Rs.2,57,300/- as compensation to the appellant.

4. Not being satisfied with the quantum of compensation 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 appellant was aged 40 years at the time of accident and was earning a sum of Rs.300/- per day by working as Mason. The Tribunal without considering the same, fixed a sum of Rs.4,500/- as monthly income of the appellant. It is further contended that the appellant sustained fracture of clavicle, fracture of left scapula and fracture of right ribs, crush injury in forearm from which SSG done and other disabilities. Due to the injuries sustained by him, he could not continue his work as he was doing earlier. P.W.2/Doctor has assessed the disability of the appellant as 65%, but the Tribunal reduced the disability to 20% without giving any valid reason. The Tribunal has not awarded any amount towards attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the appellant has not produced any document to prove that he was earning a sum of Rs.300/- per day. In the absence of any material evidence, the Tribunal rightly fixed the monthly income of the appellant at Rs.4,500/-. The Tribunal after considering the materials available on record, has awarded 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 respondent/Transport Corporation and perused all the materials available on record.

8. It is the contention of the appellant that he was aged 40 years at the time of accident and was earning a sum of Rs.300/- per day by working as Mason. The appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.4,500/- as monthly income of the appellant. The accident is of the year 2011 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- is fixed as monthly income of the appellant. According to appellant, he sustained multiple injuries and due to the injuries, he has difficulty in standing continuously, lifting weight, doing work by using left hand, breathing and he could not do the work as he

was doing earlier. To prove the injuries the appellant examined P.W.2/Doctor who assessed the disability of the appellant as 65%. The Tribunal reduced the same to 20% towards loss of earning power for the whole body, which is proper. As per Ex.P3/discharge summary, the appellant was aged 40 years at the time of accident. As per Second Schedule, the Tribunal applied multiplier '16', which is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '15'. Considering the nature of injuries and disability, the Tribunal adopted multiplier method while awarding compensation towards loss of disability and the same is proper. In view of the same, the amount awarded by the Tribunal towards disability is modified to Rs.2,16,000/- (Rs.6,000/- X 12 X 15 X 20%).

9. According to the appellant, he has taken treatment as in-patient in Government General Hospital, Chennai from 12.04.2011 to 03.06.2011 and subsequently, he has taken treatment as in-patient in the same hospital from 02.03.2012 to 15.03.2012, totally 63 days. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries sustained by the appellant and period of treatment taken by the appellant, a sum of Rs.31,500/- (63 x 500) is granted towards attendant charges. The amount awarded by the Tribunal towards extra nourishment is meagre and hence the same is hereby enhanced to Rs.30,000/-. The amounts awarded by the Tribunal under 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
Pecuniary Loss				
1.	Loss of income	13,500	13,500	Confirmed
2.	Transportation	10,000	10,000	Confirmed
3.	Extra nourishment	10,000	30,000	Enhanced
4.	Loss of amenities	10,000	10,000	Confirmed

5.	Damages to clothes	1,000	1,000	Confirmed
6.	Attendant charges	-	31,500	Granted
Non Pecuniary Loss				
7.	Pain and suffering	40,000	40,000	Confirmed
8.	Disability	1,72,800	2,16,000	Enhanced
	Total	Rs.2,57,300/-	Rs.3,52,000/-	Enhanced by Rs.94,700/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,57,300/- is hereby enhanced to Rs.3,52,000/- 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/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

1. The IV Judge,

The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2. The Section Officer

V.R. Section, High Court, Chennai.

+1 cc to M/s.K.J.Sivakumar, Advocate Sr.No. 23861

+1 cc to M/s.K.Varadhakamaraj, Advocate Sr.No. 23628

C.M.A.No.1636 of 2013

GMR (CO)

RMP (04/01/2021)