

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1730 of 2013

P.Murugan

.. Appellant/Petitioner

Vs.

The Managing Director,  
Metropolitan Transport Corporation Limited,  
No.2, Pallavan Salai,  
Chennai - 600 002.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.11.2010 made in M.C.O.P.No.2007 of 2009 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.V.MuthuVisakan  
For Respondent : Mr.S.Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 08.11.2010 made in M.C.O.P.No.2007 of 2009 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.2007 of 2009 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the above 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 06.06.2009.

4.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 respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.1,51,500/- as compensation to the appellant.

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

6. The learned counsel appearing for the appellant contended that in the accident the appellant sustained severe head injury and injury in hip and compound fracture in left femur and plate was fixed and multiple injuries all over the body. P.W.2/Doctor examined the appellant and certified that the appellant suffered 50% disability. The Tribunal erred in not awarding compensation by adopting multiplier method. The amount awarded by the Tribunal towards disability at the rate of Rs.2,000/- per percentage of disability is meagre. The appellant was a Tender Coconut Seller and was earning a sum of Rs.300/- per day. The Tribunal has fixed a meagre sum of Rs.4,500/- per month as notional income of the appellant and awarded only a sum of Rs.18,000/- as compensation towards loss of income for four months. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, transportation, attendant charges and damages to clothes are meagre. The Tribunal has not awarded any amount towards mental agony and additional transport expenses and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal has awarded a sum of Rs.1,00,000/- towards 50% disability at the rate of Rs.2,000/- per percentage of disability which is not meagre. The appellant has not proved that he suffered functional disability and he is unable to do the work as he was doing earlier. Hence, he is not entitled to compensation for loss of earning capacity. The appellant has not produced any material evidence with regard to avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the appellant is not meagre. The amounts awarded by the Tribunal under different heads are not meagre and the appellant is not entitled to any amount towards mental agony and additional transport expenses. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. 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.

9. From the materials available on record, it is seen that it is the contention of the appellant that in the accident, he sustained severe head injury and injury in hip and compound fracture in left femur and plate was fixed and multiple injuries

all over the body. To prove the same, the appellant examined himself as P.W.1 and P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that the appellant suffered 50% disability and issued Ex.P4/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor has awarded a sum of Rs.1,00,000/- for 50% disability at the rate of Rs.2,000/- per percentage of disability. The accident occurred in the year 2009 and a sum of Rs.2,000/- awarded by the Tribunal per percentage of disability is meagre. The appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,50,000/- (Rs.3,000/- X 50% of disability).

10.It is the contention of the appellant that he was aged 40 years at the time of accident and was a Tender Coconut Seller and was earning a sum of Rs.300/- per day. The appellant failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income for four months. The accident occurred in the year 2009 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.6,500/- per month is fixed as notional income of the appellant. Due to the injuries sustained in the accident, the appellant would not have worked atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.39,000/- (Rs.6,500/- X 6 months). From the materials on record, it is seen that in the accident the appellant sustained fracture of left femur and had undergone surgery and took treatment as in-patient in the hospital for 29 days from 06.06.2009 to 04.07.2009. Considering the nature of injuries and treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment, transportation and attendant charges are meagre and the same are enhanced to Rs.10,000/-, Rs.7,500/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. The appellant is entitled to a sum of Rs.10,000/- towards loss of amenities. The amounts awarded by the Tribunal towards pain and sufferings, medical expenses and damages to clothes 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 |
|-------|---------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability          | 1,00,000/-                      | 1,50,000/-                        | Enhanced                               |
| 2.    | Pain and sufferings | 15,000/-                        | 15,000/-                          | Confirmed                              |

|    |                    |               |               |                           |
|----|--------------------|---------------|---------------|---------------------------|
| 3. | Loss of income     | 18,000/-      | 39,000/-      | Enhanced                  |
| 4. | Extra nourishment  | 5,000/-       | 10,000/-      | Enhanced                  |
| 5. | Transportation     | 5,000/-       | 7,500/-       | Enhanced                  |
| 6. | Medical expenses   | 5,000/-       | 5,000/-       | Confirmed                 |
| 7. | Attendant charges  | 3,000/-       | 15,000/-      | Enhanced                  |
| 8. | Damages to clothes | 500/-         | 500/-         | Confirmed                 |
| 9. | Loss of amenities  | -             | 10,000/-      | Granted                   |
|    | Total              | Rs.1,51,500/- | Rs.2,52,000/- | enhanced by Rs.1,00,500/- |

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,51,500/- is hereby enhanced to Rs.2,52,000/- 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 the necessary Court fee, if any on the enhanced amount of 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, to the credit of M.C.O.P.No.2007 of 2009 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

1. The III Judge,  
Motor Accident Claims Tribunal,  
Small Causes Court,  
Chennai.

2.The Section Officer,  
VR Section,  
High Court,  
Madras.

+1cc to Mr.K.V.Muthu Visakam, Advocate, S.R.No. 34867

C.M.A.No.1730 of 2013

SSD(CO)  
GN(10/05/2021)



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