

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1735 of 2013

Manivannan

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.
Kancheepuram. .. Respondent /Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.10.2010 made in M.C.O.P.No.171 of 2008 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

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 19.10.2010 made in M.C.O.P.No.171 of 2008 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai.

2.The appellant is claimant in M.C.O.P.No.171 of 2008 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.11.2007.

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/Transport Corporation and directed the respondent to pay a sum of Rs.77,000/- 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 in the accident, the appellant suffered fracture of left hand bone. He examined the doctor as P.W.2, who has assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P5. The Tribunal awarded only a meagre sum of Rs.60,000/- as compensation towards disability. The appellant was earning a sum of Rs.6,000/- per month by working as a lorry driver. Due to the accident, he could not do the work as he was doing earlier. The Tribunal without considering the same, awarded only a meagre sum of Rs.3,000/- towards loss of income for one month. The Tribunal ought to have awarded more compensation towards loss of income and adopted multiplier method while awarding compensation towards loss of earning. The Tribunal has not awarded any compensation towards loss of amenities, medical expenses and damage to clothes. 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 filed any document to prove his avocation and income. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal rightly fixed a sum of Rs.3,000/- as monthly income of the appellant. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. 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 and perused all the materials available on record.

8.It is the contention of the appellant that at the time of accident, he was working as a lorry driver and was earning a sum of Rs.6,000/- per month. The appellant failed to prove the said

contention. In the absence of any material evidence to prove the income of the appellant, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.3,000/- towards loss of income for one month. The accident is of the year 2007 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.5,000/- is fixed as monthly income of the appellant. Due to the accident, the appellant would not have attended his work atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.30,000/- (Rs.5,000/- X 6).

8(i). In the accident, the appellant suffered fracture of left hand bone. He examined the doctor as P.W.2, who has assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P5. The Tribunal accepting the same, awarded a sum of Rs.60,000/- (Rs.2,000/- X 30%) towards disability at the rate of Rs.2,000/- per percentage of disability and the same is in order. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper.

8(ii). According to the appellant, he has taken treatment as in-patient in the hospital from 23.11.2007 to 29.11.2007. The sum of Rs.2,000/-, Rs.1,000/- and Rs.1,000/- awarded by the Tribunal towards extra nourishment, transportation and attendant charges respectively are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards extra nourishment, transportation and attendant charges are hereby enhanced to Rs.5,000/-, Rs.5,000/- and Rs.7,500/- respectively. The Tribunal has not awarded any compensation towards loss of amenities and hence, a sum of Rs.5,000/- is awarded towards loss of amenities. The appellant has not produced any medical bills to prove that he incurred medical expenses and hence, he is not entitled to any compensation towards medical expenses. The compensation awarded by the Tribunal towards pain & sufferings is just and reasonable and hence, the same is 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	3,000	30,000	Enhanced
2.	Disability	60,000	60,000	Confirmed
3.	Pain and suffering	10,000	10,000	Confirmed
4.	Extra nourishment	2,000	5,000	Enhanced
5.	Transportation	1,000	5,000	Enhanced
6.	Attendant charges	1,000	7,500	Enhanced
7.	Loss of amenities	-	5,000	Granted
	Total	77,000	1,22,500	Enhanced by Rs.45,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.77,000/- is hereby enhanced to Rs.1,22,500/- along 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 (CCC)
/true copy/
Sub Asst. Registrar

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To

1.The Additional Subordinate Judge
The Motor Accident Claims Tribunal,
Tiruvannamalai.

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

+1 cc to M/s.M.Malar Advocate sr22944

+1 cc to Mr.K.J.Sivakumar Advocate sr22895

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