

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2462 of 2011

Ibramsa

..Appellant/Petitioner

Vs.

The Managing Director,
The Tamil Nadu State Transportation Corporation Ltd.,
Kumbakkonam Taluk,
Kumbakonam.

..Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.10.2001 made in M.C.O.P.No.174 of 2000 on the file of the Motor Accident Claims Tribunal, Additional District Court, Nagapattinam.

For Appellant : Mr.A.E.Ravi Chandran
for Ms.C.Usha

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 23.10.2001 made in M.C.O.P.No.174 of 2000 on the file of the Motor Accident Claims Tribunal, Additional District Court, Nagapattinam.

2.The appellant is the claimant in M.C.O.P.No.174 of 2000 on the file of the Motor Accident Claims Tribunal, Additional District Court, Nagapattinam. He filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.05.1998.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and directed respondent-Transport Corporation to pay a sum of Rs.1,22,800/-

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 bones and damages occurred in urinary tubes. P.W.3/Dr.Arumuga Pandian, who treated the appellant for hip bone fracture issued Ex.P14/disability certificate and P.W.5/Dr.Kanagasababathi, who treated the appellant for fracture in urinary tubes assessed the disability of the appellant at 30% and issued Ex.P15/disability certificate. But the Tribunal has not awarded any amount towards disability and loss of earning capacity. The appellant was working as Assistant Divisional Officer in Telephone Department and was earning a sum of Rs.3,600/- per month. The appellant has produced Ex.P11/Salary certificate and proved the income, but the Tribunal has awarded only Rs.10,800/- towards loss of income for three months. The appellant has spent a sum of Rs.15,300/- towards transportation and he proved the same by examining the driver of the Taxi, Ramesh as P.W.2. The Tribunal has not awarded any amount towards transportation. Due to the injuries, the appellant has taken treatment in Tanjore Medical College and Hospital, Tanjore as in-patient for 63 days from 10.05.1998 to 09.06.1998, 18.07.1998 to 28.08.1998, 26.11.1998 to 03.12.1998, 25.03.1999 to 29.03.1999 and 30.08.1999 to 04.09.1999. The Tribunal has not awarded any amount towards loss of amenities and loss of marital prospects & enjoyment of life. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.D.Venkatachalam, learned counsel appearing for the respondent/Transport Corporation contended that the appellant suffered only simple injuries and hence he is not entitled to compensation towards disability. The appellant has not produced any document to show that he lost his income during the treatment period. In such circumstances, a sum of Rs.10,800/- awarded by the Tribunal as compensation towards loss of income for three months is excessive. The appellant is not entitled to any amount towards loss of amenities and loss of marital prospects & enjoyment of life. The amounts awarded by the Tribunal under different heads are not meagre and 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. From the materials on record, it is seen that in the accident the appellant suffered fracture of bones and fracture in urinary tubes. To prove the nature of injuries and disability, the appellant examined P.W.3 and P.W.5/Doctors. P.W.3/Dr.Arumuga Pandian, who treated the appellant for hip bone fracture had issued Ex.P14/disability certificate. Further, P.W.5/Dr.Kanagasababathi, who treated the appellant for fracture in urinary tubes had assessed the disability of the appellant at 30% and issued Ex.P15/disability certificate. But, the Tribunal has not awarded any amount towards disability which is not correct. The appellant is entitled to compensation for 30% disability. The accident occurred in the year 1998. The appellant has not proved that he suffered functional disability and is not entitled to compensation by adopting multiplier method. A sum of Rs.30,000/- is granted for disability at the rate of Rs.1,000/- per percentage by adopting percentage method.

9. It is the contention of the appellant that he was aged 33 years and was working as Assistant Divisional Officer in Telephone Department and was earning a sum of Rs.3,600/- per month. To prove the same, he produced Ex.P11/salary certificate for the month of April 2001. The Tribunal accepted the contention of appellant and Ex.P11/salary certificate, fixed a sum of Rs.3,600/- per month as notional income of the appellant and awarded a meagre sum of Rs.10,800/- towards loss of income for three months. Due to the injuries sustained by the appellant in the accident, treatment taken and disability he would not have attended his work atleast for a period of twelve months. Thus, the amount awarded by the Tribunal towards loss of income is modified to Rs.43,200/- (Rs.3,600/- X 12 months). According to the appellant, he has taken treatment in Tanjore Tanjore Medical College and Hospital, Tanjore as in-patient for 63 from 10.05.1998 to 09.06.1998, 18.07.1998 to 28.08.1998, 26.11.1998 to 03.12.1998, 25.03.1999 to 29.03.1999 and 30.08.1999 to 04.09.1999 and the Tribunal has awarded only a meagre amount of Rs.2,000/- towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, he is entitled to a sum of Rs.12,600/- (Rs.200/- X 63 days) towards attendant charges at the rate of Rs.200/- per day. Considering the nature of injuries and disability suffered by the appellant, the amount awarded by the Tribunal towards extra nourishment is meagre and hence, the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of amenities and loss of marital prospects & enjoyment of life. Therefore, a sum of Rs.15,000/- and Rs.50,000/- respectively are awarded towards loss of amenities and loss of marital life & enjoyment of life. The amounts awarded by the Tribunal towards pain and suffering is just and reasonable and hence, the same is hereby confirmed.

10.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.	Loss of Income	10,800/-	43,200/-	Enhanced
2.	Attendant charges	2,000/-	12,600/-	Enhanced
3.	Pain & suffering	1,00,000/-	1,00,000/-	Confirmed
4.	Extra nourishment	10,000/-	15,000/-	Enhanced
5.	Loss of amenities	-	15,000/-	Granted
6.	Loss of marital prospects and enjoyment of life	-	50,000/-	Granted
7.	Disability	-	30,000/-	Granted
	Total	Rs.1,22,800/-	Rs.2,65,800/-	Enhanced by Rs.1,43,000/-

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,22,800/- is hereby enhanced to Rs.2,65,800/- with interest at the rate of 9% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. The respondent/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court, together 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.174 of 2000 on the file of the Motor Accident Claims Tribunal, Additional District Court, Nagapattinam. 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

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Nagapattinam.

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

+1cc to Mr.A.E.Ravichandran, Advocate, S.R.No.22328

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.22208

C.M.A.No.2462 of 2011

MG (CO)
RV (05/01/2021)



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