

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2084 of 2012

R.Prabhu

... Appellant/Petitioner

vs.

The Metropolitan Transport Corporation Ltd.,
Legal Cell,
Pallavan Salai,
Chennai-600 002.

...Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.08.2011 made in MCOP.No.2686 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Sessions Judge, II Fast Track Court, Chennai.

For Appellant : Mrs.Ravindran
For Mr.A.Shanmugaraj

For Respondent : Mr.K.Natarajan

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 09.08.2011 passed by the Motor Accident Claims Tribunal, (Additional District Sessions Judge, II-FTC) Chennai in MCOP.No.2686 of 2008.

Brief facts leading to the filing of this appeal:

2. The Appellant sustained injuries as a result of an accident which took place on 01.11.2007 caused by a bus bearing registration No.TN 01 N 3250 owned by the respondent/transport corporation. The accident happened when the Appellant/claimant was travelling as a passenger in MTC Bus bearing Registration No. TN 01 N 3250 in route no.5-B from south to north direction at Dr.Durgabai Deshmuk Road, near Adyar Signal junction, while turning the bus, ran over the part on the left side of the road platform. Due to which, the Appellant/claimant sustained

grievous injury. According to the claimant, the accident had happened only due to the rash and negligent driving by the driver of the bus.

3. The Appellant/claimant preferred a claim before the Motor Accident Claims Tribunal, (Additional District Sessions Judge, II-FTC) Chennai in MCOP.No.2686 of 2008 against the respondent/transport corporation seeking a compensation of Rs.5,00,000/- for the injuries sustained by him as a result of the accident.

4. The Motor Accident Claims Tribunal by its Award dated 09.08.2011 passed in MCOP.No.2686 of 2011 directed the respondent/transport corporation to pay the claimant a sum of Rs.3,06,711/- as compensation together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

5. The break-up details of the compensation passed by the Tribunal in favour of the Appellant are as follows:

Heads	Award passed by the Tribunal (Rs.)
Permanent disability	82,500/-
Medical Expenses	1,84,211/-
Loss of income (5 months)	15,000/-
Pain and suffering, transportation & Extra nourishment	25,000/-
Total	3,06,711/-

6. The Appellant/claimant, unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned Award dated 09.08.2011, has preferred this Appeal before this Court seeking enhancement of compensation.

7. Heard Mr.Ravindran, learned counsel appearing for the Appellant and Mr.K.Natarajan, learned counsel appearing for the respondent.

8. The contention of the Appellant/claimant is that considering the nature of injuries sustained by him, the Tribunal ought to have awarded higher compensation, by applying the multiplier method, instead of assessing the disability compensation on percentage basis. According to the Appellant, the Appellant being a salesman, the compensation awarded by the Tribunal, under the various other heads, is also not a just compensation.

9. This Court has perused and examined the impugned Award as well as the materials and evidence available on record.

10. Before the Tribunal, the Appellant/claimant has filed 13 documents, which were marked as Ex.P1 to Ex.P13 and three witnesses were examined on his side namely the Appellant/claimant himself as PW1, the Doctor, who examined him as PW2 and the manager of Lakshman Sruthi Musical Private Limited where the Appellant/claimant was working as a salesman at the time of the accident as PW3. On the side of the respondent/transport corporation, one witness was examined and no document was filed.

11. The case of the Appellant/claimant, as seen from the claim petition is that he was aged about 17 years and working as a salesman in Lakshman Shruthi Musicals, Chennai-26 and earning a monthly income of Rs.3,000/- at the time of the accident. Before the Tribunal, the Appellant/claimant had claimed a compensation of Rs.5,00,000/-. The Appellant/claimant sustained grievous injuries on both his legs. He has sustained degloving injury in both the legs and he had undergone plastic surgery. He was hospitalised between 01.01.2007 and 26.11.2007 for a total period of 27 days, as seen from the discharge summary issued by Padmapriya Nursing Home (Ex.P2) and the evidence of PW3, Sathya @ Sathyanarayanan, Manager of Lakshman Shruthi Musicals Private Limited, also supports the contention of the Appellant/claimant that he was a salesman in the said firm, at the time of the accident and was earning a monthly income of Rs.3,000/-. The Tribunal has awarded a sum of Rs.15,000/- towards loss of earning for the period of five month calculated at Rs.3,000/- per month. The same is in order and does not call for any interference.

12. The photographs of the Appellant/claimant taken during the time of his treatment was also placed before this Court by the learned counsel for the Appellant/claimant. As seen from the said photographs, the injuries seem to be of griveous nature in both the legs of the Appellant/claimant. The year of the accident is 2007. As seen from the disability certificate (Ex.P11), the Doctor has assessed the disability of the Appellant/claimant at 55%. The Tribunal has awarded Rs.82,500/- as compensation towards disability, suffered by the Appellant/claimant calculated at Rs.1,500/- per percentage of disability. This Court is of the considered view that the award passed by the Tribunal towards disability compensation is too low. After considering the year of the accident, age and avocation of the Appellant/claimant, this Court enhances the disability compensation to Rs.1,10,000/- calculated at Rs.2,000/- per percentage of disability instead of Rs.1,500/- per percentage of disability fixed by the Tribunal.

13. The Tribunal has rightly awarded Rs.1,84,211/- towards medical expenses, which is supported by the medical bills i.e Ex.P4 to Ex.P7.

14. The Tribunal has awarded only a sum of Rs.25,000/- towards pain and suffering, transportation and nutritious food, which in the considered view of this Court is very meagre. This Court is of the considered view that the Tribunal ought to have considered the grievous injuries sustained by the Appellant/claimant in both his legs and ought to have granted a higher compensation towards pain and suffering, transportation and nutritious food. Accordingly, this Court enhances the same to Rs.75,000/-.

15. The injuries would have certainly immobilised the Appellant/claimant at least for a period of five months and he would have been unable to do his regular work during that period. The Tribunal ought to have awarded compensation towards attender charges, considering the nature of injuries sustained by the Appellant/claimant. Since the Tribunal has not granted compensation towards attender charges, this Court deems it fit that a sum of Rs.25,000/- be awarded as attender charges to the Appellant/claimant.

16. For the foregoing reasons, the compensation awarded by the Tribunal to the Appellant/claimant is enhanced from Rs.3,06,711/- to Rs.4,09,211/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Permanent disability	82,500/-	1,10,000/-
Medical Expenses	1,84,211/-	1,84,211/-
Loss of income (5 months)	15,000/-	15,000/-
Pain and suffering, transportation & Extra nourishment	25,000/-	75,000/-
Attender charges		25,000/-
Total	3,06,711/-	4,09,211/-

Conclusion:

17. In the result, this Appeal is partly allowed by enhancing the award amount from Rs.3,06,711/- to Rs.4,09,211/-. However, the rate of interest fixed by the Tribunal is confirmed. The respondent/transport corporation is directed to deposit the modified award amount of Rs.4,09,211/-, after

deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs to the credit of MCOP.No.2686 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the claimant/Appellant through RTGS within a period of four weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

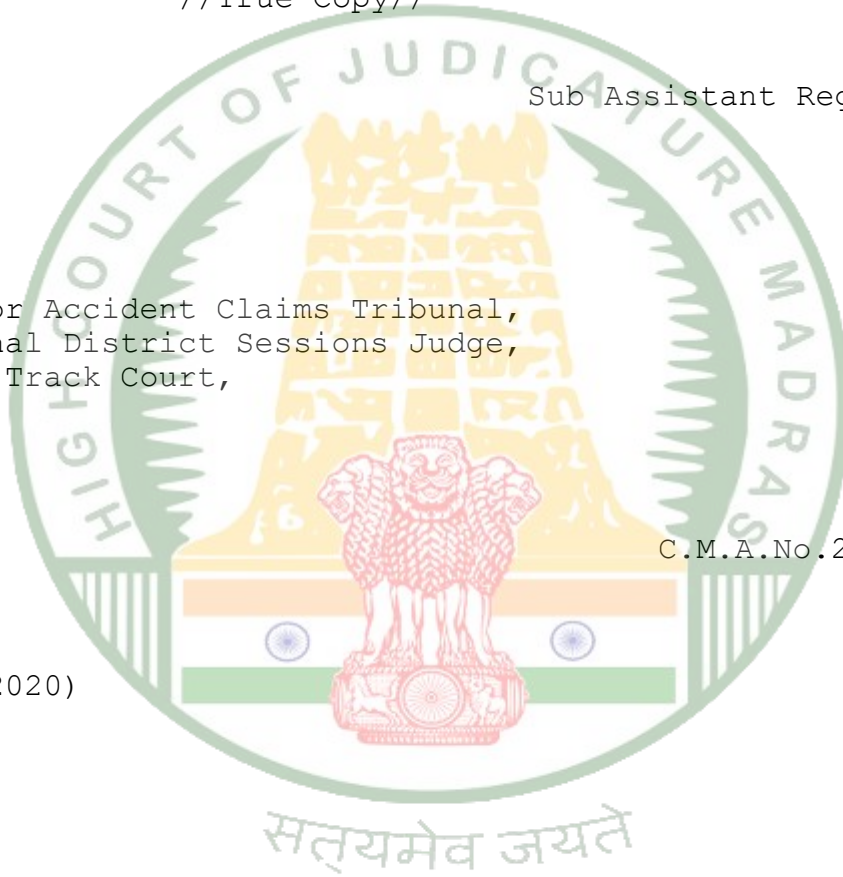
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To

1.The Motor Accident Claims Tribunal,
Additional District Sessions Judge,
II Fast Track Court,
Chennai.

C.M.A.No.2084 of 2012

PVS (CO)
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