

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.418 of 2020

B.Ravi

.. Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation
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 04.01.2019 made in M.C.O.P.No.1966 of 2012 on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.S.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 04.01.2019 made in M.C.O.P.No.1966 of 2012 on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1966 of 2012 on the file of Motor Accident Claims Tribunal, VI 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 20.01.2012.

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.2,20,000/- 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/claimant contended that he was working as House Keeping in M/s.U.K.Facilities Services Pvt. Ltd., and was earning a sum of Rs.7,500/- per month. The appellant was aged 20 years at the time of the accident. The Tribunal has fixed a meagre sum of Rs.6,500/- as monthly income of the appellant. It is further contended that the appellant has sustained fracture of shaft of left femur and fracture of both bones of right leg and severe head injury. The appellant proved the same by examining Doctor. PW2/Doctor assessed the disability of the appellant as 35%. The Tribunal reduced the disability of the appellant to 25% without giving valid reason. 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 documents to prove his avocation and income. In the absence of any material evidence, with regard to avocation and income of the appellant, the Tribunal rightly fixed a sum of Rs.6,500/- as monthly income of the appellant which is not meagre. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not meagre 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 the appellant sustained fracture of shaft of left femur and fracture of both bones of right leg. P.W.2/Doctor assessed that the appellant sustained 35% of disability. The respondent has not let in any contra evidence to disprove the evidence of P.W.2/Doctor and disability certificate. The Tribunal has reduced the percentage of disability to 25% holding that P.W.2/Doctor has not assessed the percentage of disability to whole body and granted compensation of Rs.75,000/- at the rate of Rs.3,000/- per percentage of disability. The reason given by the Tribunal is not correct. The appellant is entitled to 35% of disability as there is no contra evidence. Thus, a sum of Rs.1,05,000/- (35% x Rs.3,000) is awarded towards disability at the rate of Rs.3,000/- per percentage of disability.

9. According to the appellant, he was aged 20 years at the time of accident and was earning a sum of Rs.7,500/- per month by working as House Keeping in M/s.U.K.Facilities Services Pvt Ltd. The appellant has not filed any document to substantiate the said contention. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.26,000/- towards loss of income for a period of four months, which is meagre. The accident is of the year 2012 and hence Rs.8,000/- per month is fixed as notional income of the appellant. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a period of six months. Hence, a sum of Rs.48,000/- (Rs.8,000/- X 6) is awarded towards loss of income for a period of six months. The appellant has taken treatment as an in-patient in Rajiv Gandhi Government General Hospital from 20.01.2012 to 16.03.2012 and subsequently, surgery was conducted on 30.01.2012 & 15.02.2012. The amounts awarded by the Tribunal towards extra nourishment, damages to clothes and attendant charges are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.40,000/-, Rs.2,000/- and Rs.40,000/- are enhanced towards extra nourishment, damages to clothes and attendant charges. 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
1.	Disability	75,000	1,05,000	Enhanced
2.	Pain and sufferings	60,000	60,000	Confirmed
3.	Extra nourishment	20,000	40,000	Enhanced
4.	Transport to Hospital	10,000	10,000	Confirmed
5.	Damages to clothes	500	2,000	Enhanced
6.	Attendant charges	13,500	40,000	Enhanced

7.	Medical expenses	5,000	5,000	Confirmed
8.	Loss of income	26,000	48,000	Enhanced
9.	Loss of amenities	10,000	10,000	Confirmed
	Total	Rs.2,20,000/-	Rs.3,20,000/-	Enhanced by Rs.1,00,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,20,000/- is hereby enhanced to Rs.3,20,000/- 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 (CS-IV)

//True copy//

Sub Assistant Registrar

mtl

To

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

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

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.11065

+1cc to Mr.S.Sivakumar, Advocate SR.No.10948

C.M.A.No.418 of 2020

RSV(CO)
GMY(24/11/2020)