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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2156 of 2013

S.Srinivasan

.. Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
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 06.07.2011 made in M.C.O.P.No.3860 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.K.Suryanarayanan

For Respondent : Dr.S.S.Swaminathan

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 06.07.2011 made in M.C.O.P.No.3860 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.3860 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.09.2006.

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.9,62,000/- as compensation to the appellant.

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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. This Court by the order dated 22.01.2020, directed the appellant to appear before the Medical Board constituted by the Dean, Rajiv Gandhi Government General Hospital, Chennai - 600 003 for examination. But the medical report has not been received till date. The learned counsel appearing for the appellant submitted before this Court to decide the appeal on merits and made the following contentions.

7. The learned counsel appearing for the appellant contended that in the accident the appellant sustained fracture in right leg ankle and fracture in pelvic bone, completely damaged urinary bladder and anus. Due to the injuries, his marital life is affected and his life is spoiled. P.W.2/Doctor examined the appellant and certified that appellant suffered 95% disability and issued Ex.P10/disability certificate to that effect. But, the Tribunal erroneously reduced the percentage of disability to 60% and awarded compensation only for 60% of disability. At the time of accident, the appellant was aged 28 years, working as Senior Operator in ICMC Corporation Limited, Chennai and was earning a sum of Rs.7,000/- per month. The appellant marked Ex.P9/salary certificate to show that he was earning a sum of Rs.7,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.5,000/- as monthly income of the appellant. The appellant has taken treatment as inpatient in Government Royapettah Hospital and at Government General Hospital, Chennai for 217 days. To prove the nature of injuries and period of treatment taken, the appellant has filed documents as Exs.P2 to P8. The amounts awarded by the Tribunal towards pain and sufferings, transportation, extra nourishment, loss of marital life are meagre. The Tribunal has not awarded any amount towards future medical expenses to remove the plates fixed in his right leg ankle and also has not awarded any amount towards loss of expectation of life and prayed for enhancement of compensation.



8. Per contra, Dr.S.S.Swaminathan, learned counsel appearing for the respondent-Transport Corporation contended that P.W.2/Doctor assessed disability for 4 parts of the body and the total disability assessed by P.W.2/Doctor is excessive. The Tribunal considering the disability assessed by P.W.2/Doctor, converted the same to whole body and fixed disability of the appellant excessively at 60%. The Tribunal ought to have fixed $\frac{1}{3}$ rd of the disability assessed by the Doctor for whole body. The appellant failed to prove the salary by examining the author of the certificate. The Tribunal did not accept the certificate and fixed notional income of the appellant at Rs.5,000/- per month, applied multiplier method and awarded compensation for 60% of disability, which is excessive. In addition to the amounts awarded towards loss of earning power, the Tribunal has awarded a sum of Rs.65,000/- for loss of income during treatment period and awarded amounts under different heads, which are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

9. 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.

10. From the materials available on record, it is seen that the appellant suffered multiple fracture and injuries in the accident. The appellant has taken treatment as inpatient for 7 spells and underwent 8 surgeries. The appellant proved the same by marking Exs.P2 to P11 and examined Doctor as P.W.2, who assessed the disability for different parts of the body. P.W.2/Doctor certified that appellant suffered 95% disability for 4 parts of the body. The Tribunal while granting compensation for loss of earning capacity, converted the disability assessed by P.W.2/Doctor to the whole body as 60% instead of fixing $\frac{1}{3}$ rd disability assessed by P.W.2/Doctor. In view of the same, the appellant is not entitled to compensation for 60% disability. Further, the appellant has claimed that he was working as Senior Operator in ICMC Corporation Limited, Chennai and was earning a sum of Rs.7,000/- per month and produced Ex.P9/salary certificate. The Tribunal did not accept Ex.P9/salary certificate on the ground that appellant failed to examine the author of Ex.P9 and fixed a sum of Rs.5,000/- per



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month as notional income of the appellant. The accident occurred in the year 2006 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident and age of the appellant, a sum of Rs.6,500/- per month is fixed as notional income of the appellant. The appellant was aged 28 years at the time of accident and the Tribunal erroneously applied multiplier '18'. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] is '17'. Thus, the compensation awarded by the Tribunal towards loss of earning power is modified to Rs.7,95,600/- [Rs.6,500/- X 12 X 17 X 60/100]. Considering the nature of injuries and period of treatment taken by the appellant, the Tribunal has awarded a sum of Rs.65,000/- towards loss of income for a period of 13 months and the same is enhanced to Rs.84,500/- (Rs.6,500/- X 13 months) at the rate of Rs.6,500/- per month.

11.From the materials available on record, it is seen that the appellant has taken treatment as inpatient at Government Royapettah Hospital and at Government General Hospital, Chennai totally for 217 days in 7 different spells and underwent 8 surgeries. Considering the period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and attendant charges are enhanced to Rs.25,000/- and Rs.50,000/-respectively. In addition to the amounts awarded by the Tribunal towards extra nourishment, attendant charges, loss of marital and sex life, the Tribunal has awarded a sum of Rs.25,000/- towards mental agony. In view of the same, the appellant is not entitled to any amount towards loss of amenities. The learned counsel appearing for the appellant submitted that appellant has to undergo another surgery for removal of plates fixed in the right leg. Considering the same, the appellant is entitled to a sum of Rs.10,000/- towards future medical expenses. The amounts awarded by the Tribunal towards transportation, medical expenses, mental agony, loss of marital and sex life and pain and sufferings 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.	Loss of earning power	6,48,000/-	7,95,600/-	Enhanced
2.	Pain and sufferings	30,000/-	30,000/-	Confirmed
3.	Loss of income	65,000/-	84,500/-	Enhanced
4.	Medical expenses	30,000/-	30,000/-	Confirmed
5.	Extra nourishment	15,000/-	25,000/-	Enhanced
6.	Transportation	10,000/-	10,000/-	Confirmed
7.	Attendant charges	39,000/-	50,000/-	Enhanced
8.	Mental Agony	25,000/-	25,000/-	Confirmed
9.	Loss of marital and sex life	1,00,000/-	1,00,000/-	Confirmed
10.	Future medical expenses	-	10,000/-	Granted
	Total	Rs.9,62,000/-	Rs.11,60,100/-	Enhanced by Rs.1,98,100/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,62,000/- is hereby enhanced to Rs.11,60,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent is directed to deposit the 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.3860 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the 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.

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Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

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To

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

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

+1CC to Mr.K.Suryanarayanan, Advocate, SR.No. 40964
+1CC to Mr.S.S.Swaminathan, Advocate, SR.No. 41277

C.M.A.No.2156 of 2013

KM(CO)
B.VC (14/09/2021)