

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2364 of 2013

A.Saravanan

.. Appellant/Petitioner

Vs

The Managing Director
State Express Transport Corporation Limited
Pallavan salai
Chennai-2.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2010 made in M.C.O.P.No.2924 of 2003 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, (Fast Track Court No.III), Chennai.

For Appellant : Mr.K.R.Ponnuswamy
for M/s.Anand and Suryas
For Respondent : Mr.K.Kathiresan

J U D G M E N T

This matter is heard through "Video Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 30.01.2010 made in M.C.O.P.No.2924 of 2003 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, (Fast Track Court No.III), Chennai.

2.The appellant is the claimant in M.C.O.P.No.2924 of 2003 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, (Fast Track Court No.III), Chennai. He filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.05.2003.

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 and directed the respondent/Transport Corporation to pay a sum of Rs.2,10,500/- 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 the appellant was working as an Radiator Assembler in M/s.S.R.Radiator Assembly Private Ltd. and was earning a sum of Rs.6,000/- per month. In the accident, the appellant suffered right humerus bones fracture, the fracture is malunited, hip bone was replaced and artificial hip was fixed. He has also suffered mandible fracture and lost four teeth. After the accident, the appellant could not continue his work as he was doing earlier and lost his entire earning power. The Tribunal without considering the same, fixed a meagre sum of Rs.3,000/- per month as notional income of the appellant. The Tribunal failed to award any amount towards loss of income from the date of accident till the date of trial. P.W.3/Doctor has assessed that the appellant suffered 70% disability for hip fracture and humerus bone fracture. P.W.2/Doctor, the Dentist, assessed that the appellant suffered 30% partial and permanent disability for mandible fracture and loss of four teeth. The total disability is 100%. The Tribunal without any reason reduced the same to 50%. The Tribunal ought to have followed the formula based on the guidelines for arriving compensation towards functional disability and loss of earning power. If formula $a + b (90-A)/90$ is applied, the disability suffered by the appellant will be 67.77%. The Tribunal erroneously deducted a sum of Rs.1,44,000/- from the amount awarded for loss of earning power and granted only a sum of Rs.1,80,000/-. The Tribunal ought to have granted more compensation by fixing a sum of Rs.8,000/- as notional income of the appellant for 67.77% disability. The amounts awarded by the Tribunal towards extra nourishment, transportation and pain and sufferings are meagre. The Tribunal failed to award compensation towards loss of income, attendant charges and loss of amenities and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that two doctors examined by the appellant are stock witnesses and their assessment of disability is not based on any guidelines. The appellant filed Ex.P3 physically handicapped certificate issued by the treated doctor in Government Stanley Hospital, who assessed the disability as 40%, The Tribunal erroneously fixed the disability as 50%, adopted multiplier method and granted compensation, which is excessive. The appellant has not filed

any document to prove the avocation and income and he failed to prove that due to the disability, he lost his earning power. In the absence of document with regard to income, the Tribunal based on Minimum Wages Act, fixed Rs.3,000/- as notional income of the deceased. The accident is of the year 2003 and the notional income fixed by the Tribunal is not meagre. In the absence of any evidence with regard to functional disability, the Tribunal granted more compensation. The compensation awarded by the Tribunal under different heads are not meagre. 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 the entire materials available on record.

8. It is the contention of the appellant that in the accident, he suffered right humerus bones fracture, hip bone was replaced and artificial hip was fixed. He has also suffered mandible fracture and lost four teeth. The appellant has taken treatment as in-patient in Government Stanley Hospital in two different spells from 08.05.2003 to 10.06.2003 for 34 days and again from 17.06.2003 to 25.11.2003 for 162 days. The Doctor who treated the appellant in Government Stanley Hospital issued Ex.P3 certificate to the effect that the appellant suffered 40% disability. The appellant produced Exs.P10 and P13, the disability certificates issued by P.W.2/Dr.T.S.Kalkura and P.W.3/Dr.N.Saichandran, who deposed that the appellant suffered 30% and 70% disability respectively. P.W.2 and P.W.3 are not the Doctors who treated the appellant. The Tribunal has given finding that assessment given by P.W.2 and P.W.3/Doctors are not based on any guidelines. Considering the nature of injuries, period of treatment taken, Ex.P3 certificate issued by the treated doctor from Government Stanley Hospital, the Tribunal fixed the disability suffered by the appellant as 50%, excessively.

9. The contention of the learned counsel appearing for the appellant that the Tribunal ought to have fixed the disability as 67.77% by adopting formula is not acceptable in the present case. The treated doctor issued Ex.P3 certificate that the appellant suffered only 40% disability. P.W.2 and P.W.3/Doctors have issued certificates without following any guidelines and assessed the disability excessively. Further, P.W.2 and P.W.3/Doctors have assessed total disability as 100% for three parts of the body. To fix the disability for whole body, only $\frac{1}{3}^{\text{rd}}$ can be taken into consideration. Considering the above, the Tribunal fixed more than $\frac{1}{3}^{\text{rd}}$ of disability for loss of earning power and awarded compensation by adopting multiplier method.

The Tribunal considering the age of the appellant as 25 years, fixed a sum of Rs.3,000/- as notional income of the appellant, applied multiplier '18' and fixed 50% disability, but erroneously deducted Rs.1,44,000/- and granted only Rs.1,80,000/- towards loss of earning power. The said calculation is not correct. The appellant is entitled to a sum of Rs.3,24,000/- (Rs.3,000/- X 12 X 18 X 50/100) towards loss of earning power.

10. The appellant has taken treatment as in-patient in Government Stanley Hospital in two different spells from 08.05.2003 to 10.06.2003 for 34 days and again from 17.06.2003 to 25.11.2003 for 162 days. The Tribunal has not awarded any compensation towards attendant charges, loss of amenities and loss of income. Considering the nature of injuries, disability and period of treatment taken by the appellant, Rs.25,000/- each is awarded towards attendant charges, loss of amenities and loss of income. Though the appellant has taken treatment as in-patient in Government Hospital, he would have spent some amount towards medical expenses. The Tribunal has granted only a sum of Rs.5,000/- towards medical expenses and hence the same is enhanced to Rs.15,000/-. The amounts awarded by the Tribunal towards transportation, extra nourishment and pain and suffering are meagre and hence, the same are hereby enhanced to Rs.10,000/-, Rs.20,000/- and Rs.20,000/- respectively. The amount awarded by the Tribunal towards damage to clothes 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 earning power	1,80,000	3,24,000	Enhanced
2.	Transportation	5,000	10,000	Enhanced
3.	Extra nourishment	10,000	20,000	Enhanced
4.	Damage to clothes	500	500	Confirmed
5.	Medical expenses	5,000	15,000	Enhanced
6.	Pain and suffering	10,000	20,000	Enhanced

7.	Loss of income	-	25,000	Granted
8.	Attendant charges	-	25,000	Granted
9.	Loss of amenities	-	25,000	Granted
	Total	2,10,500	4,64,500	Enhanced by Rs.2,54,000/-

The Tribunal has awarded interest @ 9% per annum which is excessive and hence the same is hereby reduced to 7.5% per annum.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,10,500/- is hereby enhanced to Rs.4,64,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.2,54,000/- enhanced by this Court as per the order of this Court dated 11.07.2013 made in M.P.No.3 of 2013 in C.M.A.SR.No.69758 of 2012. 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

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge
Motor Accident Claims Tribunal
Fast Track Court No.III, Chennai.

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Copy To:

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

+1 cc to M/s.Anand and Suryas,Advocate Sr.No. 37329

+1 cc to Mr.K.Kathiresan, Advocate Sr.No. 37105

C.M.A.No.2364 of 2013

VBA (CO)

RMP (19/04/2021)



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