

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2509 of 2013

V.Sabastian Arokiya Privinson

.. Appellant/petitioner

Vs.

Metropolitan Transport Corporation Limited,
Rep. By its Managing Director,
No.12, Pallavan Salai,
Chennai - 2.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.12.2011, made in M.C.O.P. No.69 of 2007, on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr. F.Terry Chella Raja
for Ms.M.Malar
For Respondent : Mr.S.Sivakumar

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 15.12.2011, made in M.C.O.P. No. 69 of 2007, on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P. No. 69 of 2007, on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.01.2006.

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-Transport Corporation and directed the

respondent-Corporation to pay a sum of Rs.2,15,755/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 15.12.2011, made in M.C.O.P. No.69 of 2007, the appellant has come out with the present appeal seeking enhancement of compensation.

5. Learned counsel appearing for the appellant contended that the appellant suffered 60% disability and the Tribunal failed to award adequate compensation. The appellant has taken treatment as in-patient on seven different spells for a total period of 61 days and has further taken treatment as out-patient for 30 times over a period of three years from 03.01.2006 to 27.05.2009. The Tribunal failed to see that the appellant has suffered permanent disability, which has not healed fully. The Tribunal ought to have adopted multiplier method and awarded compensation for disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent/Transport Corporation contended that the appellant is a student, non-earning member and he has not lost any earning power. The Tribunal considering the evidence of P.W.1 and P.W.2/Doctor accepted the disability certificate issued by P.W.2/Doctor and awarded compensation for 60% disability. The amounts 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 respondent/Transport Corporation and perused the materials available on record.

8. From the materials on record, it is seen that the appellant, who was studying X standard at the time of accident suffered grievous injuries and fracture. He has taken treatment as in-patient on seven different spells for a total period of 61 days and has taken treatment as out-patient for 30 times over the period of three years, i.e., from 03.01.2006 to 27.05.2009. P.W.2/Doctor examined the appellant and assessed the disability of the appellant as 60%. The Tribunal, considering the evidence of P.W.2/Doctor with regard to nature of injuries and also considering the medical records produced by the appellant, has held that the injuries suffered by the appellant was not fully cured and he is wearing knee bandage as pus and water are coming

out from the wound. The Tribunal has awarded compensation for permanent disability only by adopting percentage method. Considering the nature of injuries, treatment taken, age of the appellant and that the appellant is not fully healed and his education is affected, it is a fit case for awarding compensation towards permanent disability by adopting multiplier method. In the II Schedule, Rs.15,000/- is fixed as annual income for a non-earning member. The Hon'ble Apex Court in the judgment reported in 2014 (1) SCC 244 (Kishan Gopal and another vs. Lala and others), held that fixing a sum of Rs.30,000/- per annum will be reasonable amount for the minor. This Court has fixed notional income of the minor as Rs.45,000/- to Rs.60,000/- per annum in some cases, considering the passage of time, after enactment of II Schedule of the Motor Vehicles Act. In the present case, the accident is of the year 2006 and the injured appellant was aged 15 years and was studying X standard at the time of accident. In view of the above, a sum of Rs.30,000/- per annum is fixed as income of the appellant. The Tribunal fixed the disability of the appellant as 60%. The appellant was aged 15 years at the time of accident and the multiplier applicable is '15'. Thus, the appellant is entitled to a sum of Rs.2,70,000/- (Rs.30,000/- x 15 x 60/100) towards disability.

9. The appellant has taken treatment as in-patient on seven different spells for a total period of 61 days and has further taken treatment as out-patient for 30 times over a period of three years from 03.01.2006 to 27.05.2009. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, pain and sufferings, attendant charges, loss of education and extra nourishment are enhanced to Rs.25,000/-, Rs.50,000/-, Rs.25,000/-, Rs.50,000/- and Rs.25,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities and damages to clothes. Therefore, Rs.25,000/- and Rs.2,000/- are awarded towards loss of amenities and damages to cloth respectively. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation	15,000/-	25,000/-	Enhanced
2.	Extra nourishment	15,000/-	25,000/-	Enhanced
3.	Medical expenses	18,755/-	18,755/-	Confirmed
4.	Attendant charges	5,000/-	25,000/-	Enhanced
5.	Loss of education	2,000/-	50,000/-	Enhanced
6.	Pain and sufferings	40,000/-	50,000/-	Enhanced
7.	Disability	1,20,000/-	2,70,000/-	Enhanced
8.	Loss of amenities	-	25,000/-	Granted
9.	Damages to cloth	-	2,000/-	Granted
	Total	Rs.2,15,755/-	Rs.4,90,755/-	Enhanced by Rs.2,75,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,15,755/- is hereby enhanced to Rs.4,90,755/- along with interest and costs. 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 if any already deposited, 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.69 of 2007, on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to

pay the necessary court fee, if any, on the enhanced amount of compensation now determined by this Court. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

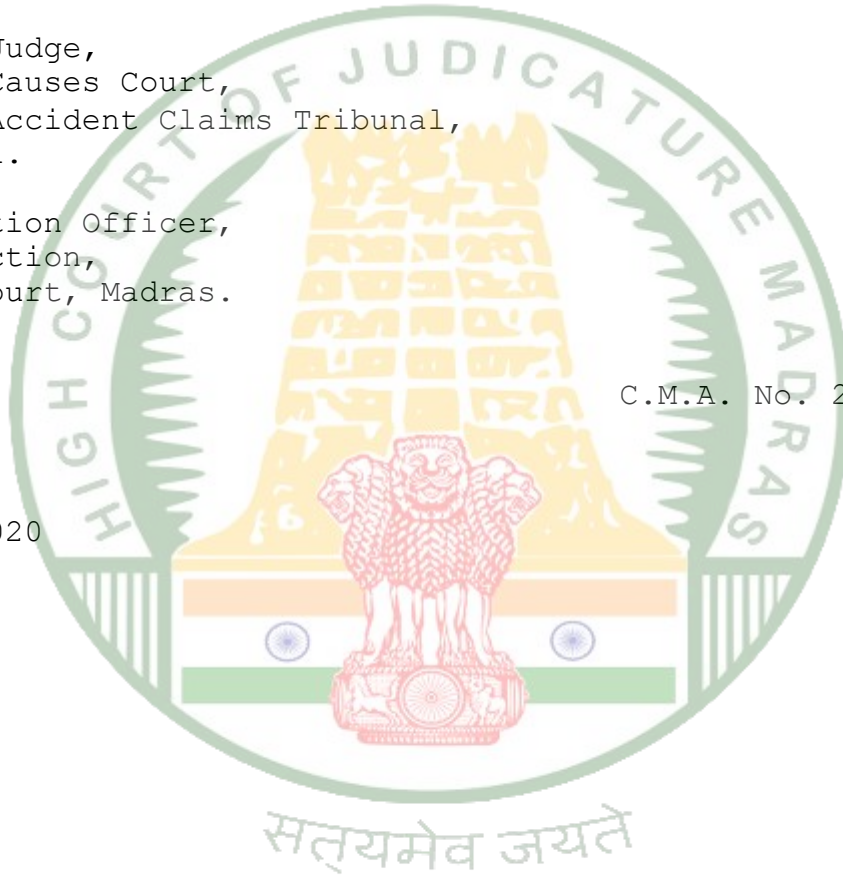
maya/krk
To

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

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

C.M.A. No. 2509 of 2013

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