

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2768 of 2013

Kathirvel

.. Appellant /petitioner

Vs.

Managing Director
Tamil Nadu State Transport Corporation Ltd.
Trichy.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.07.2011 made in M.C.O.P.No.40 of 2010 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondent : Mr.D.Venkatachalam

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 18.07.2011 made in M.C.O.P.No.40 of 2010 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

2.The appellant is claimant in M.C.O.P.No.40 of 2010 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai. He filed the 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 18.04.2010.

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.77,500/- 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 at the time of accident, the appellant was earning a sum of Rs.10,000/- per month by working as a road laying coolie. The appellant suffered fracture on right side of head, right zygomatic arch, greater wing of sphenoid and laceration all over the body. The appellant examined the doctor as P.W.2, who assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P7 to prove the injuries. The Tribunal without assigning any reason, reduced the disability to 25% and awarded compensation towards disability by adopting percentage method. Due to the injuries, the appellant could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method to award compensation towards loss of earning power. The Tribunal without appreciating the above materials, awarded only a meagre sum of Rs.10,000/- towards loss of income during treatment period. The Tribunal ought to have awarded compensation separately towards attendant charges, transportation and medical expenses. The Tribunal has not awarded any compensation towards loss of amenities and damage to clothes. 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 proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. The appellant has not filed any document to prove his avocation and income. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal awarded a sum of Rs.10,000/- towards loss of income, which is excessive. 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 all the materials available on record.

8. It is the contention of the appellant that in the accident, he suffered fracture on right side of head, right zygomatic arch, greater wing of sphenoid and laceration all over

the body. The appellant examined the doctor as P.W.2, who assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P7 to prove the injuries. The Tribunal reduced the disability to 25% considering the cross-examination of P.W.2/Doctor and awarded a sum of Rs.25,000/- (Rs.1,000/- X 25%) towards disability at the rate of Rs.1,000/- per percentage of disability. The respondent did not let in any oral and documentary evidence to disprove the disability assessed by P.W.2/Doctor and the disability certificate marked as Ex.P7. Therefore, the appellant is entitled to compensation for 40% disability, as there is no contra evidence. The appellant has not proved that he suffered functional disability and there is loss of earning capacity and therefore, the percentage method adopted by the Tribunal while awarding compensation towards disability is proper. But the amount awarded by the Tribunal per percentage of disability is meagre. The accident is of the year 2009 and hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,20,000/- (Rs.3,000/- X 40%).

8(i).The appellant has contended that he was earning a sum of Rs.10,000/- per month by working as a road laying coolie at the time of accident. The appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal awarded a sum of Rs.10,000/- towards loss of income during treatment period, which is meagre. The accident is of the year 2009 and hence, a sum of Rs.7,500/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for three months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.22,500/- (Rs.7,500/- X 3).

8(ii).According to the appellant, he has taken treatment as in-patient in the Government hospital, Chennai, from 19.04.2010 to 07.05.2010 and the discharge summary was marked as Ex.P3 to prove the same. The Tribunal awarded a lumpsum amount of Rs.25,000/- towards transportation, medical expenses, future medical expenses and attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.10,000/- is separately awarded towards attendant charges. The Tribunal has not awarded any compensation towards loss of amenities and damage to clothes. Considering the nature of injuries sustained by the appellant, Rs.10,000/- and Rs.2,000/- are awarded towards loss of amenities and damage to clothes respectively. The amounts awarded by the Tribunal under all 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.	Transportation, medical expenses, future medical expenses	25,000	25,000	Confirmed
2.	Extra nourishment	7,500	7,500	Confirmed
3.	Pain and suffering	10,000	10,000	Confirmed
4.	Permanent disability	25,000	1,20,000	Enhanced
5.	Loss of income	10,000	22,500	Enhanced
6.	Attendant charges	-	10,000	Granted
7.	Loss of amenities	-	10,000	Granted
8.	Damage to clothes	-	2,000	Granted
	Total	77,500	2,07,000	Enhanced by Rs.1,29,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.77,500/- is hereby enhanced to Rs.2,07,000/- 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. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.1,29,500/- enhanced by this Court as per the order of this Court dated 07.08.2013 in M.P.No.1 of 2013 in C.M.A.SR.No.97825 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/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The Chief Judicial Magistrate
The Motor Accident Claims Tribunal
Tiruvannamalai.

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

+1 cc to M/s.M.Malar Advocate sr22943

+1 cc to Mr.D.Venkatachalam Advocate sr22822

C.M.A.No.2768 of 2013

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