

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2964 of 2013

Kumar

.. Appellant/Petitioner

Vs.

1.The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram.

2.Vaidegi

3.The Branch Manager,
The Oriental Insurance Co. Ltd.,
No. 75, Krishnan Street,
Thiruvannamalai.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 12.11.2009, made in M.C.O.P. No. 94 of 2006, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

For Appellant : Mr. F. Terry Chellaraja

For Respondents: Mr. K.J. Sivakumar (For R1)

Died (For R2)

No appearance (For R3)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 12.11.2009, made in M.C.O.P. No. 94 of 2006, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

2.The appellant-claimant filed M.C.O.P. No. 94 of 2006, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.03.2005.

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 1st respondent-Transport Corporation Bus and directed the 1st respondent to pay a sum of Rs.76,500/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the respondents 2 and 3.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 12.11.2009, made in M.C.O.P. No. 94 of 2006, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that in the accident, the appellant sustained bleeding injuries in the left eyebrow, contusion over the left eye, injuries in the right cheek and upper lips, injuries in the lower cheek, disarray of teeth, upper and lower jaws were crushed into pieces, bleeding in both the nostrils and tenderness over both the cheeks. He proved the same by examining P.W.2 - Doctor, assessed that the appellant suffered 35% disability and issued Ex.P11 - Disability Certificate to that effect. The Tribunal has granted only a sum of Rs.57,120/- towards disability. At the time of accident, the appellant was doing Business and was earning a sum of Rs.4,000/- per month. The Tribunal has fixed only a sum of Rs.800/- per month as notional income of the appellant. The Tribunal has not awarded any amount towards mental agony, loss of amenities, attendant charges and loss of income. In any event, the total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 1st respondent-Transport Corporation contended that the Tribunal in the absence of any material evidence to prove the avocation and income of the appellant, has fixed a sum of Rs.800/- per month as notional income, which is not meagre. Considering all the materials on record and the nature of injuries suffered by the appellant, the Tribunal has granted just compensation. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Though notice has been served on the 3rd respondent and their counsel name is printed in the cause list, there is no representation for them.

8.Heard learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.

9.It is the contention of the appellant that in the accident, he sustained severe multiple injuries on his face, as well as bone fracture and bleeding injuries all over his body and P.W.2- Doctor has assessed the percentage of disability suffered by the appellant as 35%. At the time of accident, the appellant was doing Business and was earning a sum of Rs.4,000/- per month. He has failed to prove the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.800/- per month as notional income of the appellant. The accident is of the year 2005 and the monthly income fixed by the Tribunal is meagre. This Court fixes a sum of Rs.2,500/- per month as notional income of the appellant. The appellant was aged 32 years at the time of accident. Hence, applying the multiplier '17', the amounts awarded by the Tribunal towards disability is enhanced to Rs.1,78,500/- [Rs.2,500/- x 12 x 17 x 35%]. 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
1.	Disability	57,120/-	1,78,500/-	Enhanced
2.	Medical bills as per Ex.P8	7,500/-	7,500/-	Confirmed
3.	Medical bills as per Ex.P10	6,000/-	6,000/-	Confirmed
4.	Pain and sufferings	2,880/-	2,880/-	Confirmed
5.	Transport expenses, other medical expenses and extra nourishment	3,000/-	3,000/-	Confirmed
	Total	76,500/-	1,97,880/-	Enhanced by Rs.1,21,380/-

10.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.76,500/- is enhanced to Rs.1,97,800/- along with interest and costs. The 1st respondent-Transport Corporation is directed to deposit the enhanced award amount, now determined by this Court, along with interest and

costs, 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. 94 of 2006. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.1,21,380/-, enhanced by this Court as per the order of this Court dated 19.08.2013, made in M.P. No. 1 of 2012 in C.M.A. SR. 60678 of 2012. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,21,380/-. The appeal is dismissed as against the respondents 2 and 3. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To

1.The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

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

+1 CC to Mr.K.J. Sivakumar, Advocate sr 23858

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C.M.A. No. 2964 of 2013

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