

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3009 OF 2013

Ruban

.. Appellant/Claimant

Vs.

The Managing Director,
State Express Transport Corporation Ltd,
Chennai-2, Tamilnadu. .. Respondent/Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.12.2010 made in M.C.O.P.No.499 of 2006 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja
for M/s.M.Malar

For Respondent : Mr.K.J.Sivakumar

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 08.12.2010 made in M.C.O.P.No.499 of 2006 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.499 of 2006 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. 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 11.03.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation and directed the respondent/Transport Corporation to pay a sum of Rs.2,55,000/- as compensation to the appellant.

4. Not being satisfied with the quantum of compensation 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 aged 22 years at the time of accident and was earning a sum of Rs.6,000/- per month by working as an Office Assistant. In the accident, the appellant has sustained injuries like comminuted fracture distal third, right radius and right ulna in the right wrist, fracture in the left parietal and occipital hemorrhage contusion small SDH, diffuse cerebral edema, injury in the primary brain stem and underwent surgery. The appellant has examined P.W.3/Doctor to prove the disability and injuries suffered by him. P.W.3/Doctor has certified that the appellant has sustained 70% disability. The Tribunal reduced the percentage of disability from 70% to 50% and granted meagre amount as compensation towards disability. Due to the injuries, he could not continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation towards disability. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. 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 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method applied by the Tribunal is proper. The Tribunal after considering the materials available on record, has awarded just compensation. 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 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that in the accident he suffered head injury, fracture of skull, primary brain stem comminuted with D/3 Radius with fracture M/3, D/3 junction with right ulna and multiple injuries all over the body. To prove the same, he examined PW3/Doctor who deposed that the appellant has sustained fracture of skull and hemorrhage and diffused cerebral oedema and due to the injuries, the appellant is suffering from headache, giddiness and shivering. PW3/Doctor has assessed the disability for brain injury as 35%. He further deposed that the appellant sustained fracture of both bones in right wrist and implants were fixed and malunited. Implants were removed. The

appellant is having difficulty in lifting the object by his right hand and for which PW3/Doctor has assessed the disability as 35%. Hence, the total assessment of the disability is 70%. The Tribunal considering the evidence of PW3/Doctor held that the assessment of disability by PW3 appears to be normal. However, the Tribunal reduced the disability as 25% for each injury and arrived at the total disability as 50% which is not proper. The respondents have not let in any evidence to disprove the evidence of P.W.3/Doctor and Ex.P11/disability certificate. Hence, the appellant is entitled to compensation for 70% of disability. The accident is of the year 2005. Hence, a sum of Rs.1,40,000/- (70% x Rs.2,000/-) is awarded towards disability by awarding a sum of Rs.2,000/- per percentage of disability. The appellant has not proved that he suffered functional disability and hence he is not entitled to compensation by adopting multiplier method.

9. According to the appellant, he was aged 22 years at the time of accident and was earning a sum of Rs.6,000/- per month by working as an Office Assistant. To prove the said contention, the appellant has produced Ex.P9/salary certificate but the appellant has not examined the Author of Ex.P9 to prove the same. In the said circumstances, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.9,000/- towards loss of income for a period of three months, which is not proper. The accident is of the year 2005 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.4,000/- per month is fixed as monthly income of the appellant. Considering the nature of injuries sustained by the appellant, he would not have worked atleast for a period of six months. Hence, a sum of Rs.24,000/- (Rs.4,000/- X 6) is awarded towards loss of income for a period of six months. The appellant has taken treatment as in-patient in Sridevi Speciality Hospital, Chennai from 12.03.2005 to 11.04.2005 and subsequently, he underwent surgery on 22.03.2005. The amounts awarded by the Tribunal towards transport to hospital, extra nourishment and pain & sufferings are meagre. Considering the period of treatment and nature of injuries sustained by the appellant, the amounts awarded by the Tribunal towards transport to hospital, extra nourishment and pain & sufferings are enhanced to Rs.5,000/-, Rs.10,000/- and Rs.30,000/- respectively. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Hence, a sum of Rs.10,000/- each awarded towards attendant charges and loss of amenities. 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:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent disability	1,00,000	1,40,000	Enhanced
2.	Loss of earning	9,000	24,000	Enhanced
3.	Transport to Hospital	1,000	5,000	Enhanced
4.	Extra nourishment	2,000	10,000	Enhanced
5.	Medical expenses	1,23,000	1,23,000	Confirmed
6.	Pain and sufferings	20,000	30,000	Enhanced
7.	Attendant charges	-	10,000	Granted
8.	Loss of amenities	-	10,000	Granted
	Total	Rs.2,55,000/-	Rs.3,52,000/-	Enhanced by Rs.97,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,55,000/- is hereby enhanced to Rs.3,52,000/- 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. 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(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

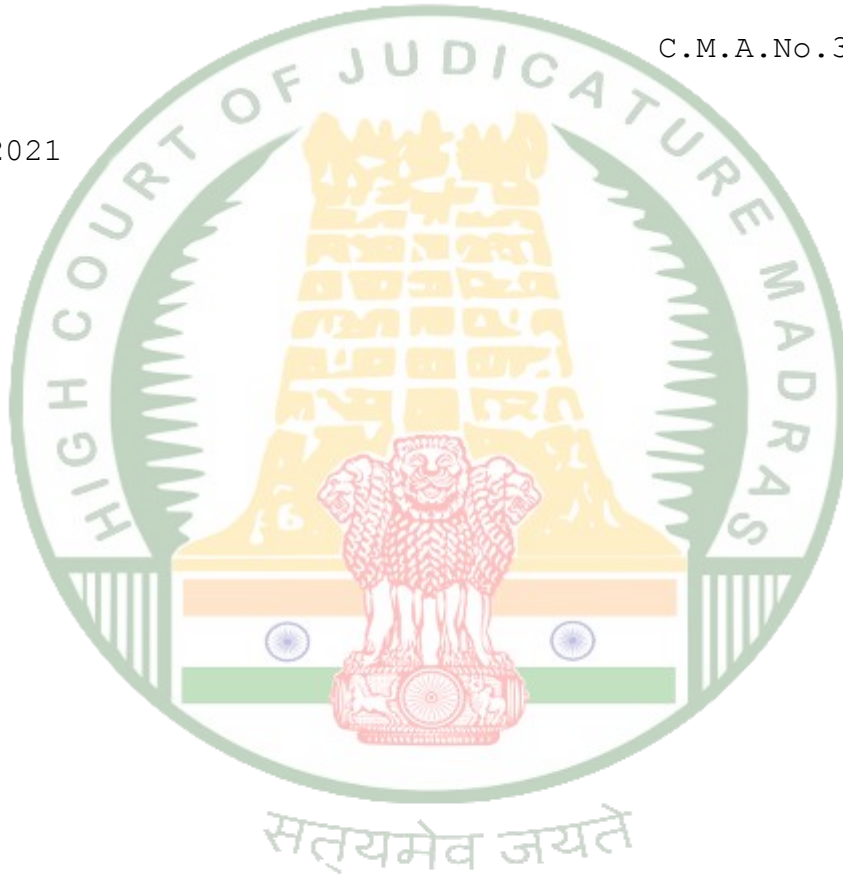
2. The Section Officer
V.R.Section
High Court, Chennai.

+lcc to M/s.M.Malar, Advocate, S.R.No.22947

+lcc to Mr.K.J.Sivakumar, Advocate, S.R.No.22892

C.M.A.No.3009 of 2013

VBA(CO)
CS/17/03/2021



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