

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.307 of 2013

Chidambaram

... Appellant/Petitioner

Vs.

1.Marappan

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Milagu Parai,
Tiruchi. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.08.2002 made in M.C.O.P.No.344 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, Namakkal.

For Appellant : Ms.K.Ponmani
for Mr.T.Muruga Manickam

For R2 : Mr.D.Venkatachalam

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 29.08.2002 made in M.C.O.P.No.344 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, Namakkal.

3.The appellant is the claimant in M.C.O.P.No.344 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, Namakkal. He filed the above said claim petition, claiming a sum of Rs.2,50,000/- as compensation for the injuries sustained by him in the accident that took place on 16.11.1997.

4.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 2nd respondent-Transport Corporation and directed the respondents to pay a sum of Rs.50,000/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that the Tribunal ought to have awarded compensation as claimed by the appellant in the claim petition. The appellant suffered 60% disability and proved the same by examining P.W.2/Doctor. The Tribunal erred in awarding only a sum of Rs.40,000/- towards disability. The Tribunal failed to award compensation for loss of future earning capacity as the appellant lost his earning power and he could not engage in his business activities as engaged prior to the accident and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Transport Corporation contended that the appellant has not proved that he lost his earning capacity and hence, he is not entitled to any compensation for loss of earning power. The accident occurred in the year 1997 and the Tribunal considering the evidence of P.W.2/Doctor and disability suffered by the appellant, awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Transport Corporation and perused the entire materials on record.

9.From the materials available on record, it is seen that it is the contention of the appellant that in the accident, he sustained injuries in head and shoulder. According to the appellant, he lost his earning power and could not do the work as he was doing earlier. The appellant examined P.W.2/Doctor, who deposed that appellant suffered 60% disability and he lost 60% earning power. The Tribunal has awarded a sum of Rs.40,000/- towards disability. The Tribunal has not stated based on which the said amount was awarded. In view of the assessment of P.W.2/Doctor that appellant lost 60% earning power, the appellant is entitled to compensation of Rs.60,000/- towards loss of

earning power. The appellant has not proved that he lost his earning capacity and hence, he is not entitled to any compensation for future loss of earning capacity. A sum of Rs.5,000/- awarded by the Tribunal towards pain and sufferings is just and reasonable and the same is confirmed. A sum of Rs.5,000/- awarded by the Tribunal towards medical expenses, transportation and extra nourishment is meagre and the same is enhanced to Rs.15,000/-. From the award passed by the Tribunal, it is seen that the appellant has taken treatment in the hospital as in-patient from 16.11.1997 to 26.11.1997 for 11 days. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to clothes. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.5,000/- each is awarded towards attendant charges and loss of amenities and Rs.500/- towards damages to clothes. 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.	Loss of earning power	40,000/-	60,000/-	Enhanced
2.	Pain and sufferings	5,000/-	5,000/-	Confirmed
3.	Medical expenses, Transportation & Extra nourishment	5,000/-	15,000/-	Enhanced
4.	Attendant charges	-	5,000/-	Granted
5.	Loss of amenities	-	5,000/-	Granted
6.	Damages to clothes	-	500/-	Granted
	Total	Rs.50,000/-	Rs.90,500/-	Enhanced by Rs.40,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.50,000/- is hereby enhanced to Rs.90,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd 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, to the credit of M.C.O.P.No.344 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, Namakkal. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk
To

The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.III,
Namakkal.

Copy to

The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.D.Venkatachalam, Advocate Sr.39095

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