

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.856 of 2012

A.Duraikannu

.... Appellant/Petitioner

Versus

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Chennai - 2. Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 12.04.2011 and made in M.C.O.P. No.624 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee.

For Appellant : Mr.V.Sivakumar
for Mr.V.Jagannathan

For Respondent : Mr.S.Sivakumar

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 12.04.2011 passed by the Motor Accidents Claims Tribunal, Additional District & Sessions Judge , Fast Track Court No.I, Poonamallee in MCOP No.624 of 2009.

2. The appellant has sought for enhancement of compensation on the ground that despite the assessment of his disability by the Doctor at 40%, the Tribunal has reduced the same to 30% and has also awarded only a meagre compensation of Rs.30,000/- as disability compensation calculated at Rs.1000/- per percentage of disability.

3. It is the case of the appellant that he sustained partial permanent disability due to the fracture of left distal radius, right middle finger, Distal Phalanx with Pulp injury, Multiple bilateral rib fractures with right Hemopneumothorax with lung contusion, as a result of the accident caused by a bus owned by the respondent / Transport

Corporation. However, it is the case of the appellant/claimant, the Tribunal under the impugned award has not considered the year of the accident as well as the nature of the injuries sustained by the appellant, while assessing the compensation payable to him. It is also his case that the compensation awarded by the Tribunal under various other heads are also low and it needs to be enhanced.

4. The Tribunal under the impugned award has awarded a sum of Rs.67,300/- together with interests and costs payable by the respondent / Transport Corporation to the appellant in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of earning	5,000/-
Medical Expenses	17,300/-
Transport to Hospital	5,000/-
Extra Nourishment	5,000/-
Pain and Sufferings	5,000/-
Loss of future amenities for his disability	30,000/-
Total	67,300/-

5. Heard Mr.Sivakumar, learned counsel for the appellant and Mr.S.Sivakumar, learned counsel for the respondent / Transport Corporation.

6. This Court has perused the materials and evidence available on record before the Tribunal.

7. Insofar as the injuries sustained by the appellant / claimant are concerned, the same have not been disputed by the respondent / Transport Corporation before the Tribunal, as seen from the evidence available on record.

8. Before the Tribunal, the appellant / claimant has filed five documents, which were marked as Exs.P1 to P5 and two witnesses were examined on his side viz., the appellant himself as PW1 and the Doctor who examined him as PW2. Two Material Objects were also marked as MO-1 and MO-2 viz., Xrays by the Tribunal. On the side of the respondent / Transport Corporation, neither any document was filed nor any witness examined.

9. As observed earlier, the respondent / Transport Corporation has not disputed the accident nor have they disputed the nature of injuries sustained by the appellant / claimant. The appellant was a Head Constable at Thirumullaivoyal Police Station when the accident happened in

the year 2009. However, the Tribunal has calculated the disability compensation at Rs.1,000/- per percentage of disability without any basis. The year of the accident is 2009. The Tribunal has not alone reduced the disability on its own ignoring the Doctor's Certificate from 40% to 30%, but has also awarded only a meagre disability compensation of Rs.30,000/- calculated at Rs.1,000/- per percentage of disability. Considering the fact that the appellant was a Head Constable and the year of the accident was 2009, the Tribunal ought to have awarded a higher compensation towards the disability sustained by the appellant / claimant. In the considered view of this Court, it would be a just compensation if Rs.90,000/- is awarded to the claimant / appellant as disability compensation, calculated at Rs.3,000/- per percentage of disability sustained by the appellant. Accordingly, the disability compensation is enhanced from Rs.30,000/- to Rs.90,000/- by this Court.

10. Insofar as the compensation awarded by the Tribunal towards medical expenses, Transportation, Extra Nourishment and loss of earning are concerned, the same is a just compensation in the considered view of this Court and accordingly, the findings regarding the same are not disturbed. However, the Tribunal has awarded only a sum of Rs.5,000/- to the appellant towards pain and suffering, which is low in the considered view of this Court. Accordingly, the same is enhanced to Rs.10,000/- from Rs.5,000/-. The Tribunal has also not awarded any compensation towards Attender charges, considering the fracture and nature of injuries sustained by the appellant. The appellant was an inpatient in a hospital for a period of 20 days i.e., from 16.04.2009 to 05.05.2009 and considering the same, the Tribunal ought to have awarded Attender charges to the appellant / claimant, which has not been done so, under the impugned award. Accordingly, a sum of Rs.5,000/- is awarded towards Attender charges by this Court. The Tribunal has also not awarded any compensation towards loss of amenities, which the appellant / claimant is legally entitled to, as per the settled position of law. This Court therefore awards Rs.5,000/- as loss of amenities to the appellant / claimant.

11. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of earning	5,000/-	5,000/-
Medical Expenses	17,300/-	17,300/-
Transport to Hospital	5,000/-	5,000/-
Extra Nourishment	5,000/-	5,000/-

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pain and Sufferings	5,000/-	10,000/-
Loss of future amenities for his disability * at Rs.1,000/- per percentage of disability * at Rs.3,000/- per percentage of disability	30,000/- *	90,000/- #
Loss of Amenities	-	5,000/-
Attender Charges	-	5,000/-
Total	67,300	1,42,300/-

12. In the result, this appeal filed by the Appellant / claimant stands partly allowed by enhancing the compensation from Rs.67,300/- to Rs.1,42,300/-, as indicated above. No costs.

13. The Respondent / Transport Corporation is directed to deposit the entire award amount as awarded by this Court together with interest at 7.5% p.a. from the date of filing of the claim petition till the date of realization and costs, less the amount, if any, already deposited to the credit of MCOP.No.624 of 2009, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the claimant through RTGS within a period of two weeks thereafter. Necessary Court fee, if any to be paid by the appellant before receiving the copy of this Judgment.

14. It is made clear that in case there was any delay in filing this appeal, the said period shall be excluded for the purpose of calculating interest.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

vsi2

To

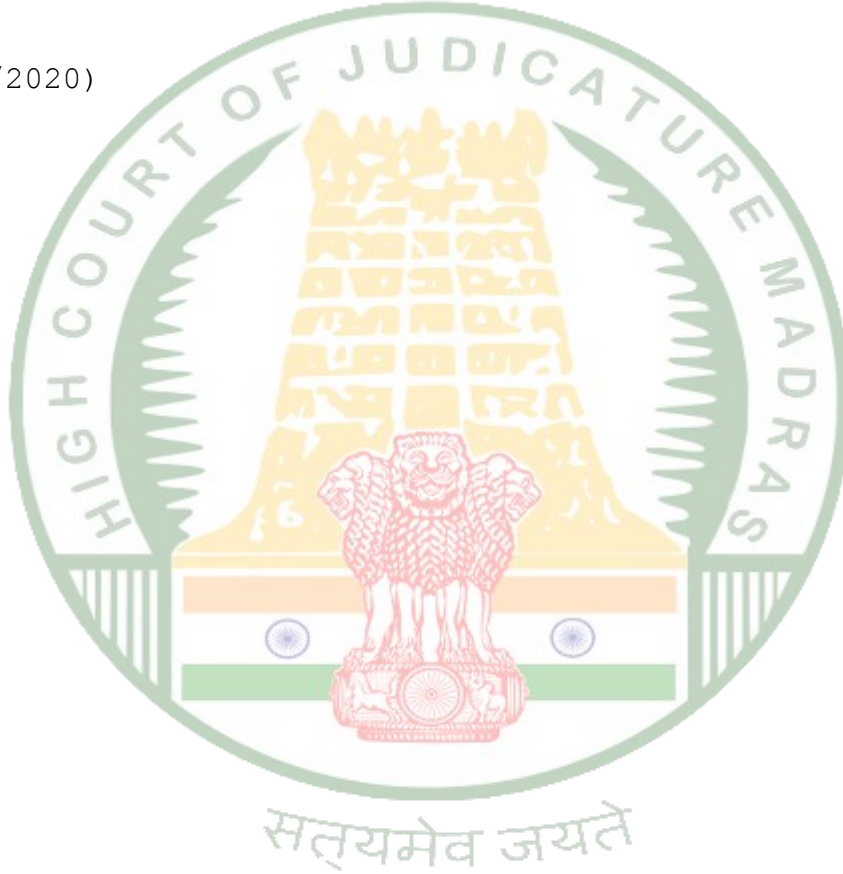
1. The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court No.I, Poonamallee.

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.

+lcc to Mr.V.Jagannathan, Advocate SR.No.25007

C.M.A.No.856 of 2012

NMI (CO)
GMY (02/09/2020)



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