

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3392 OF 2013

G.Raji

.. Appellant/Claimant

Vs.

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram Limited
Kancheepuram Division.

.. Respondent/Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.11.2010 made in M.C.O.P.No.3029 of 2007 on the file of Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja for Mr.V.Velu

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 11.11.2010 made in M.C.O.P.No.3029 of 2007 on the file of Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.3029 of 2007 on the file of Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.8,00,000/- (amended as per the order of this Court dated 24.06.2013 made in M.P.No.2 of 2013 in C.M.A.SR.No.22842 of 2013) as compensation for the injuries sustained by him in the accident that took place on 14.01.2006.

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.5,44,855/- 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 the appellant suffered fracture of both bones in both legs. He underwent surgery and external fixation was also done. P.W.2/Doctor has assessed the disability of the appellant as 65%. The appellant was earning a sum of Rs.6,000/- per month by working as a driver. The Tribunal ought to have fixed the disability of the appellant as 100% to award compensation towards loss of future earning capacity. The Tribunal erred in deducting 1/3rd towards personal expenses. The appellant has taken treatment as in-patient in the hospital from 14.01.2006 to 19.01.2006. 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 respondent/Transport Corporation contended that the Tribunal after considering all the materials available on record, awarded compensation, which is not meagre. 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 of both bones in both legs. He underwent surgery and external fixation was also done. He examined the doctor as P.W.2, who has assessed the disability of the appellant as 65% and marked the disability certificate as Ex.P11. The Tribunal accepting the same, fixed the disability of the appellant as 65% and awarded a sum of Rs.1,30,000/- (Rs.2,000/- X 65%) towards disability at the rate of Rs.2,000/- per percentage of disability. The appellant claimed that he was earning a sum of Rs.6,000/- per month by working as a driver. The appellant marked the driving license as Ex.P9 to prove his avocation. But the appellant failed to prove that he was earning a sum of Rs.6,000/- per month. In the absence of any material evidence to prove the income, the Tribunal fixed a sum of Rs.5,000/- as monthly income of the appellant and reduced the same to Rs.2,300/- on the ground that due to disability suffered by the appellant, he would not earn a sum of Rs.5,000/- per month in future. Further, the Tribunal deducted 1/3rd towards personal expenses. The accident is of the year 2006 and the

monthly income fixed by the Tribunal is correct. But the reason assigned by the Tribunal for reducing the monthly income and deducting 1/3rd towards personal expenses are not correct. Therefore, the appellant is entitled to compensation without any deduction. As per Ex.P3/medical records, the appellant was aged 38 years at the time of accident. The Tribunal erroneously applied multiplier '16'. The multiplier applicable is '15'. Thus, the compensation awarded by the Tribunal towards loss of future earning capacity is modified to Rs.5,85,000/- (Rs.5,000/- X 12 X 15 X 65/100).

8(i).According to the appellant, he has taken treatment as in-patient in the hospital from 14.01.2006 to 19.01.2006. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, the sum of Rs.6,000/- and Rs.10,000/- are awarded towards attendant charges and loss of amenities respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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.	Loss of future earning capacity	2,88,000	5,85,000	Enhanced
2.	Loss of income during treatment period	15,000	15,000	Confirmed
3.	Transportation	13,915	13,915	Confirmed
4.	Extra nourishment	5,000	5,000	Confirmed
5.	Damage to clothes	1,000	1,000	Confirmed
6.	Medical expenses	46,939	46,939	Confirmed
7.	Future medical expenses	25,000	25,000	Confirmed

8.	Pain and suffering	20,000	20,000	Confirmed
9.	Disability	1,30,000	1,30,000	Confirmed
10.	Attendant charges	-	6,000	Granted
11.	Loss of amenities	-	10,000	Granted
	Total	5,44,854 rounded off to 5,44,855	8,57,854 rounded off to 8,57,855	Enhanced by Rs.3,13,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.5,44,855/- is hereby enhanced to Rs.8,57,855/- 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. VI Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.
2. The Section Officer
V.R.Section, High Court, Chennai.

+1cc to Mr.M.Malar, Advocate, S.R.No.23915

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.23862

C.M.A.No.3392 of 2013

RSV(CO)

CS/21/01/2021