

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3446 of 2013

R.Rajendran

.. Appellant/Claimant

Vs.

Metropolitan Transport Corporation Ltd.,
Rep. by its Managing Director,
Pallavan Salai, Chennai - 600 002. .. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.08.2013 made in M.C.O.P.No.2644 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.Prabhakaran for
Mr.Um.Ravichandran
For Respondent : Mr.K.Natarajan

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 14.08.2013 made in M.C.O.P.No.2644 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2644 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.10.2010.

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.1,20,900/- 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 45 years at the time of the accident and was earning a sum of Rs.40,000/- per annum by doing mason work. In the accident, he sustained multiple injuries. He has taken treatment as in-patient in Government General Hospital from 02.10.2010 to 18.10.2010. Due to the injuries sustained by the appellant, he could not able to walk, run or sit. The Tribunal has not awarded any amount towards loss of earning power. 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 without considering that the appellant has filed claim petition under Section 163A of the Motor Vehicles Act, awarded excessive amounts under different heads. The appellant is not entitled to any enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the respondent/Transport Corporation and perused the materials available on record.

8. From the materials available on record, it is seen that the appellant has filed claim petition under Section 163-A of Motor Vehicles Act. When the claim petition is filed under Section 163-A of Motor Vehicles Act, the appellant is entitled to compensation as per structural formula in II Schedule of the Motor Vehicles Act. The Tribunal has not followed the same and therefore, the compensation awarded by the Tribunal is to be modified. The appellant has claimed that he was working as a Mason and was earning a sum of Rs.40,000/- per annum at the time of accident. The appellant failed to prove the said claim. Hence, the Tribunal fixed a sum of Rs.3,300/- as monthly income of the appellant and the same is in order. As per Ex.P4/discharge summary, the appellant was aged 45 years at the time of accident. The multiplier applicable is '15'. PW2/Doctor has assessed the disability of the appellant as 50%. The Tribunal considering the nature of injuries sustained by the appellant and evidence of PW2/Doctor, reduced the disability to 40% by giving valid reason. Thus, the appellant is entitled to a sum of Rs.2,37,600/- towards loss of earning power ($\text{Rs.3,300/-} \times 12 \times 15 \times 40\% = \text{Rs.2,37,600/-}$). The amount awarded by the Tribunal towards pain & sufferings is not proper. As per II Schedule of the Motor Vehicles Act, the appellant is entitled to only a sum of Rs.5,000/- towards pain & sufferings. The amounts awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is

hereby confirmed. The appellant is not entitled to any other amounts as awarded by the Tribunal. In view of the above, the amounts awarded by the Tribunal under all other heads are set aside. 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 income	9,900/-	-	Set aside
2.	Transport to Hospital	5,000/-	-	Set aside
3.	Extra nourishment	4,000/-	-	Set aside
4.	Medical expenses	5,000/-	5,000/-	Confirmed
5.	Loss of amenities	2,000/-	-	Set aside
6.	Pain and sufferings	15,000/-	5,000/-	Reduced
7.	Permanent disability	80,000/-	-	Set aside
8.	Loss of earning power	-	2,37,600/-	Granted
	Total	Rs.1,20,900/-	Rs.2,47,600/-	Enhanced by - Rs.1,26,700/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,20,900/- is hereby enhanced to Rs.2,47,600/- 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

To

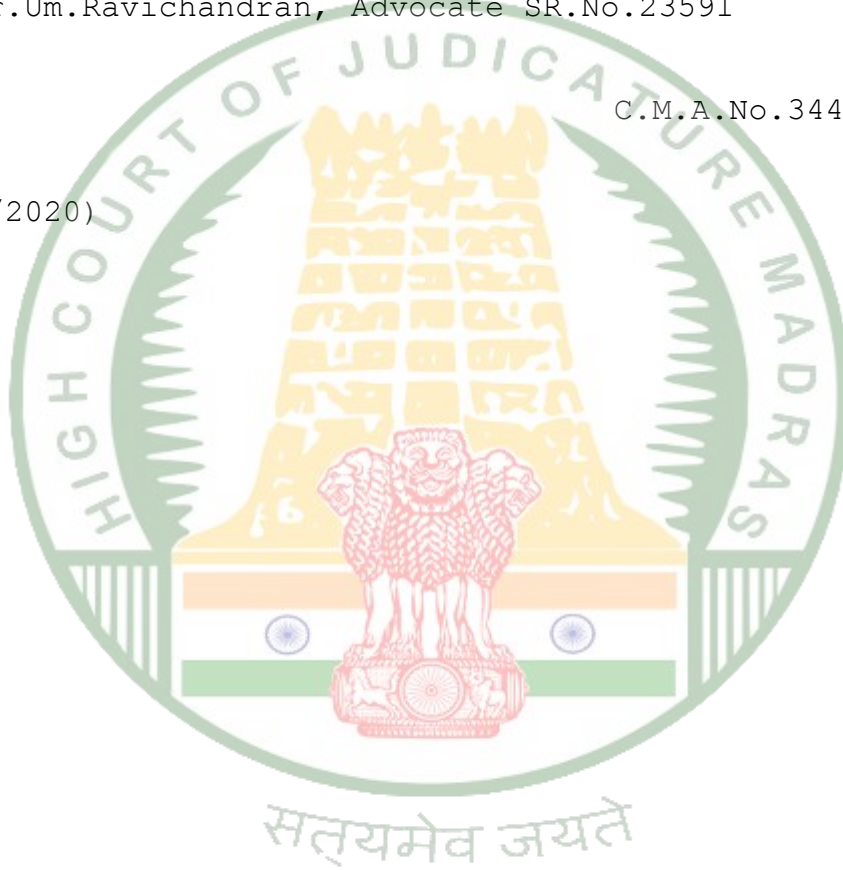
1.The III Judge,
The Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

+1cc to Mr.Um.Ravichandran, Advocate SR.No.23591

C.M.A.No.3446 of 2013

VBA (CO)
GMY (23/09/2020)



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