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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.560 of 2013

B.Kumar

.. Appellant /Claimant

Vs.

The Managing Director
Metropolitan Transport Corporation Ltd.
No.2, Pallavan salai
Chennai-600 002.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.11.2010 made in M.C.O.P.No.1218 of 2009 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.S.Thambi
for Mr.K.V.Muthuvisakan

For Respondent : Mr.S.Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 08.11.2010 made in M.C.O.P.No.1218 of 2009 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. The appellant is claimant in M.C.O.P.No.1218 of 2009 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.04.2009.

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.3,91,200/- 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.

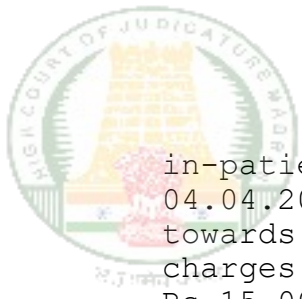
5. The learned counsel appearing for the appellant contended that the appellant was a tricycle puller, he was doing independent business and was earning a sum of Rs.250/- per day. The Tribunal without considering the same, erroneously fixed a sum of Rs.4,500/- per month as notional income of the appellant. In the accident, the appellant sustained injuries in leg and the left leg below knee was amputated. Due to the injuries and amputation, he could not do his work as he was doing earlier. He lost his entire earning capacity. The Tribunal awarded compensation by adopting multiplier method, but erroneously fixed meagre amount as monthly income. 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 accepting the disability certificate issued by P.W.2/Doctor, granted compensation by adopting multiplier method. The appellant failed to prove his avocation and income. In view of the same, the monthly income fixed by the Tribunal is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre. The appellant is not entitled for any 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 the entire materials on record.

8. It is the contention of the appellant that he was a tricycle puller and was earning a sum of Rs.250/- per day. He failed to prove the said contention by letting acceptable evidence. In the absence of material evidence, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant. The accident is of the year 2009. The notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,500/- per month is fixed as notional income of the appellant and the appellant is entitled to a sum of Rs.13,000/- towards loss of income for two months. The respondent has not let in any evidence to disprove the evidence of P.W.2/Doctor. Therefore, the appellant is entitled to compensation at the rate of Rs.6,500/- for 55% disability. Thus, the compensation awarded by the Tribunal towards permanent disability is modified as Rs.4,71,900/- (Rs.6,500/- X 12 X 11 X 55%).

8(i). According to the appellant, he has taken treatment as



in-patient in Government Stanley Hospital, Chennai, from 04.04.2009 to 01.05.2009. The amounts awarded by the Tribunal towards extra nourishment, damage to clothes and attendant charges are meagre and hence, the same are hereby enhanced to Rs.15,000/-, Rs.1,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.25,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are 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	3,26,700	4,71,900	Enhanced
2.	Loss of income for two months	9,000	13,000	Enhanced
3.	Transportation	15,000	15,000	Confirmed
4.	Extra nourishment	5,000	15,000	Enhanced
5.	Damage to clothes	500	1,000	Enhanced
6.	Medical bills	5,000	5,000	Confirmed
7.	Attendant charges	5,000	10,000	Enhanced
8.	Pain and suffering	25,000	25,000	Confirmed
9.	Loss of amenities	-	25,000	Granted
	Total	3,91,200/-	5,80,900/- rounded off to 5,81,000/-	Enhanced by Rs.1,89,800/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,91,200/- is hereby enhanced to Rs.5,81,000/- 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. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.1,89,800/- enhanced by this Court as per the order of this Court dated 20.02.2013 made in M.P.No.1 of 2012 in C.M.A.SR.No.47065 of 2012. 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-IV)

//True Copy//

Sub Assistant Registrar

Kj

To

1.III Judge

The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

Copy To

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

+1cc to Mr.K.V.Muthuvisakan, Advocate, S.R.No.35061

C.M.A.No.560 of 2013

BS(CO)
GN(25/08/2021)