

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.698 OF 2020

Balamurugan

.. Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation,
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 07.08.2018 made in M.C.O.P.No.7359 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondent : Mr.S.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 07.08.2018 made in M.C.O.P.No.7359 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.7359 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.23,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.11.2016.

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-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.1,94,500/- 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 in the accident the appellant suffered fracture of fronto parital thin SDIL, right frontal contusion, occipital bone linear, undisplaced left scapula, upper ribs contusion. P.W.2/Doctor examined the appellant and certified that appellant suffered 50% disability and issued Ex.P12/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 20% and awarded compensation only for 20% disability. The Tribunal ought to have awarded compensation for 50% disability. The appellant was aged 41 years and was working as Collection Executive in Kodak Mahindra Prime Limited, Chennai and was earning a sum of Rs.15,000/- per month at the time of accident. But the Tribunal fixed a meagre sum of Rs.10,000/- per month as notional income and awarded compensation towards loss of income only for three months. The appellant has taken treatment in the Government General Hospital, Chennai as in-patient for 12 days from 04.11.2016 to 15.11.2016 and the amounts awarded by the Tribunal towards attendant charges, extra nourishment and transportation are meagre. Due to the injuries sustained by him in the accident, he could not discharge his regular work and the amount awarded by the Tribunal towards loss of amenities is meagre. The Tribunal has not awarded any amount towards future medical expenses. 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 reduced the percentage of disability from 50% to 20% on the ground that P.W.2/Doctor has not produced any documents and guidelines and also the assessment of P.W.2/Doctor is on the higher side. Therefore, the appellant is not entitled to compensation for 50% disability. In the absence of any material evidence with regard to avocation and income, a sum of Rs.10,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. The amounts awarded by the Tribunal towards loss of income, loss of amenities, attendant charges, extra nourishment and transportation are not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.1,94,500/- as compensation to the appellant, 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 the entire materials on record.

8. From the award passed by the Tribunal, it is seen that in the accident the appellant suffered fracture of frontoparietal thin SDIL, right frontal contusion, occipital bone linear, undisplaced left scapula, upper ribs contusion. To prove the nature of injuries and disability suffered by him, the appellant examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 50% disability and issued Ex.P12/disability certificate to that effect. The respondent-Transport Corporation did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P12/disability certificate. The Tribunal reduced the percentage of disability to 20% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and P.W.2/Doctor has not produced any documents and guidelines for assessing the disability and also the assessment of P.W.2/Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not correct. Therefore, considering the nature of injuries and evidence of P.W.2/Doctor, this Court fixes the disability suffered by the appellant at 35%. The accident occurred in the year 2016 and a sum of Rs.3,000/- awarded by the Tribunal per percentage of disability is meagre. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s.IFFCO TOKIO General Insurance Company Limited Vs. Venkatesh and another, fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,75,000/- (Rs.5,000/- X 35% disability).

9. It is the contention of the appellant that at the time of accident he was aged 41 years and was working as Collection Executive in Kodak Mahindra Prime Limited, Chennai and was earning a sum of Rs.15,000/- per month. The appellant failed to prove the said contention. In the absence of any evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the appellant, which is proper. The Tribunal has awarded compensation towards loss of income only for three months. Due to the injuries and disability suffered by the appellant, he could not have attended his work atleast for a period of six months. Therefore, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.60,000/- [Rs.10,000/- X 6 months]. From the award passed by the Tribunal it is seen that the appellant has taken treatment in the Government General Hospital, Chennai as in-patient for 12

days from 04.11.2016 to 15.11.2016 and the amounts awarded by the Tribunal towards attendant charges is meagre and the same is enhanced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.20,000/- together for transportation and extra nourishment, which is not correct and the same is modified as the appellant is entitled to a sum of Rs.10,000/- towards transportation and a sum of Rs.15,000/- towards extra nourishment. The Tribunal has not awarded any amount towards damages to clothes. Therefore, a sum of Rs.2,000/- is awarded towards damages to clothes. The appellant has not produced any medical records to show that he requires future medical treatment. Therefore, he is not entitled to any amount towards future medical expenses. The amounts awarded by the Tribunal towards medical expenses, pain and sufferings and loss of amenities 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
1.	Disability	60,000/-	1,75,000/-	Enhanced
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Loss of income	30,000/-	60,000/-	Enhanced
4.	Transportation and Extra nourishment	20,000/-	10,000/-	Enhanced
			15,000/-	Enhanced
5.	Attendant charges	6,000/-	15,000/-	Enhanced
6.	Medical expenses	3,500/-	3,500/-	Confirmed
7.	Loss of amenities	25,000/-	25,000/-	Confirmed
8.	Damages to clothes	-	2,000/-	Granted
	Total	Rs.1,94,500/-	Rs.3,55,500/-	enhanced by Rs.1,61,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,94,500/- is hereby enhanced to Rs.3,55,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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, to the credit of M.C.O.P.No.7359 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced 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. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.17100

C.M.A.No.698 of 2020

VGII(CO)
CS/29/01/2021

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