

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.592 of 2020

Jayaseelan

.. Appellant/Petition

Vs.

The Managing Director, TNSTC,
No.12, Ramakrishna Road,
Salem - 7.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.08.2019 made in M.C.O.P.No.1490 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mr.K.Suryanarayanan for
Mr.T.Senthilvelmurugan

For Respondent : Ms.R.Kavitha for
Mr.D.Raghu

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 28.08.2019 made in M.C.O.P.No.1490 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

2.The appellant is claimant in M.C.O.P.No.1490 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Salem. He filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.01.2018.

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 as well as negligent act on the part of the appellant, fixed 15% contributory negligence on the part of the appellant and 85% contributory negligence on the

part of the respondent/Transport Corporation, awarded a sum of Rs.28,58,800/- as compensation and directed the respondent/Transport Corporation to pay a sum of Rs.24,29,980/- i.e., 85% of the award amount, as compensation to the appellant.

4.Challenging 15% contributory negligence on the part of the appellant and not being satisfied with the amount awarded by the Tribunal and the appellant has come out with the present appeal seeking enhancement of compensation and setting aside 15% contributory negligence.

5.Though the learned counsel appearing for the appellant raised various grounds in the appeal with regard to enhancement of compensation, when the matter is taken up for hearing, he is questioning only the monthly income fixed by the Tribunal.

6.The learned counsel appearing for the appellant/claimant contended that the appellant was aged 34 years at the time of accident and was earning a sum of Rs.25,000/- per month by working as painter. The Tribunal erroneously fixed a meagre sum of Rs.9,000/- as monthly income of the appellant and prayed for enhancement of monthly income fixed by the Tribunal.

7.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the appellant has not filed any document to prove his avocation and income. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.9,000/- as monthly income of the appellant and awarded 40% enhancement towards future prospects. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.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.

9.From the materials available on record, it is seen that the appellant has contended that he was working as painter and was earning a sum of Rs.25,000/- per month at the time of accident. The appellant has failed to substantiate the said contention. In view of the same, the Tribunal has fixed a sum of Rs.9,000/- as monthly income of the appellant. The accident is of the year 2018 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.12,000/- is fixed as monthly income of the appellant. As per, Ex.P3/Aadhar Card, the appellant was aged 36 years at the time of the accident. The Tribunal has rightly awarded 40% enhancement towards future prospects. The appellant has taken treatment as in-patient in Government Hospital, Salem from 09.01.2018 to 27.01.2018 for 19 days. The appellant has

underwent surgery and his left leg was amputated. The Handicapped Welfare Department assessed the disability of the appellant as 85%. The disability certificate issued by the Handicapped Welfare Department was marked as Ex.C1. The Tribunal accepted the disability issued by Handicapped Welfare Department and applied multiplier '15'. The amount awarded by the Tribunal towards loss of future earning capacity is enhanced to Rs.25,70,400/- (Rs.12,000/- + 4,800 (Rs.12,000/- x 40%) x 12 x 15 X 85%). The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

10.It is well settled that the Tribunal and the Court have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimant. 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	19,27,800	25,70,400	Enhanced
2.	Pain and sufferings	3,00,000	3,00,000	Confirmed
3.	Loss of amenities	3,00,000	3,00,000	Confirmed
4.	For fixing artificial leg	2,00,000	2,00,000	Confirmed
5.	Transportation charges	10,000	10,000	Confirmed
6.	Extra nourishment	1,00,000	1,00,000	Confirmed
7.	Attendant charges	20,000	20,000	Confirmed
8.	Damages to clothes	1,000	1,000	Confirmed
	Total	Rs.28,58,800/- 85% of the award amount comes to Rs.24,29,980/-	Rs.35,01,400/- 85% of the award amount comes to Rs.29,76,190/-	Enhanced by Rs.5,46,210/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.28,58,800/- is hereby enhanced to Rs.35,01,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is entitled to 85% of the award amount i.e. Rs.29,76,190/-. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to deposit 85% of the enhanced award amount now determined by this Court i.e., Rs.29,76,190/- 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 (CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge No.2,
The Motor Accident Claims Tribunal,
Salem.

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

+1cc to Mr.D.Raghu, Advocate SR.No.15547

+1cc to Mr.T.Senthilvelmurugan, Advocate SR.No.15576

C.M.A.No.592 of 2020

KK (CO)
GMY (21/09/2020)