

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.607 of 2020

D.Samuel

.. Appellant/Claimant

Vs.

The Managing Director,
Tamil Nadu Transport Corporation,
Villupuram.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2019 made in M.C.O.P.No.1138 of 2018 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.S.Udayakumar

For Respondent : Me.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 28.06.2019 made in M.C.O.P.No.1138 of 2018 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant is the claimant in M.C.O.P.No.1138 of 2018 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.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.01.2018.

4.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 to pay a sum of Rs.1,38,000/-as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that in the accident the appellant suffered fracture in the right hand and sustained severe head injuries. P.W.3/Doctor was examined to prove the disability suffered by the appellant and he assessed disability as 40%. Due to the fractures, the appellant could not do the work as he was doing earlier. The Tribunal awarded only a sum of Rs.45,000/- towards disability. Though P.W.3/Doctor has assessed the disability as 40%, the Tribunal reduced the disability to 15% without giving any reason. The appellant was a C.C.T.V. Camera Technician and was earning a sum of Rs.15,000/- per month. The Tribunal has fixed only a meagre sum of Rs.8,000/- per month as notional income of the appellant and awarded a sum of Rs.16,000/- (Rs.8,000/- x 2 months) towards loss of income for 2 months. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal rightly reduced the disability to 15% holding that the disability assessed by the doctor is not for the whole body and granted compensation. In the absence of any evidence with regard to income of the appellant, the Tribunal has fixed notional income of the appellant at Rs.8,000/- per month and awarded a sum of Rs.16,000/- (Rs.8,000/- x 2) towards loss of income. The said amount is excessive. The total compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal. सत्यमेव जयते

8.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.

9.It is the contention of the appellant that he suffered fracture in the right hand and sustained severe head injuries. To substantiate the injuries sustained by him, the appellant has examined P.W.3/Doctor, who deposed about the nature of injuries and treatment taken by the appellant and assessed the disability at 40%. The Tribunal has reduced the disability assessed by the doctor to 15% holding that the disability assessed is not for the whole body and awarded a sum of Rs.45,000/- towards

disability by awarding Rs.3,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is proper but the amount awarded by the Tribunal per percentage of disability is meagre. The amount awarded on percentage basis was periodically enhanced. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 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 2018. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Accordingly, a sum of Rs.75,000/- (Rs.5,000/- X 15%) is awarded towards disability by awarding a sum of Rs.5,000/- per percentage of disability.

10. According to the appellant, he was aged 35 years at the time of accident and was earning a sum of Rs.17,000/- per month by working as Technician. To prove the avocation and income of the appellant, he has produced Ex.P7/Salary Certificate and Ex.P8/ Leave grant certificate. The Tribunal fixed the income of the appellant at Rs.8,000/- per month on the ground that the appellant has not examined the author of the documents to prove the same and awarded a sum of Rs.16,000/- (Rs.8,000/- x 2) towards loss of income for 2 months. The accident is of the year 2018 and the income fixed by the Tribunal is meagre. A sum of Rs.12,000/- is fixed as monthly income of the appellant. Therefore, the appellant is entitled to a sum of Rs.24,000/- (Rs.12,000/- X 2) towards loss of income for 2 months. The amounts granted by the Tribunal towards transportation, attendant charges, additional nourishment and damage to clothes are very meagre and the same are hereby enhanced to Rs.10,000/-, Rs.5,000/-, Rs.15,000/- and Rs.2,000/- respectively. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they 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	45,000/-	75,000/-	enhanced
2.	Medical expenses	43,004/-	43,004/-	confirmed
3.	Loss of income	16,000/-	24,000/-	enhanced

4.	Pain & sufferings	10,000/-	10,000/-	confirmed
5.	Transportation	2,000/-	10,000/-	enhanced
6.	Additional nourishment	10,000/-	15,000/-	enhanced
7.	Damage to clothes	1,000/-	2,000/-	enhanced
8.	Attendant charges	1,000/-	5,000/-	enhanced
9.	Loss of amenities	10,000/-	10,000/-	confirmed
	Total	Rs.1,38,004/-	Rs.1,94,004/-	
	Rounded off to	Rs.1,38,000/-	Rs.1,94,000/-	enhanced by Rs.56,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,38,000/- is hereby enhanced to Rs.1,94,000/- 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. The respondent 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 six 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 by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vr

To

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

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

+1cc to Mr.S.Udayakumar, Advocate, S.R.No. 14530
+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No. 15296

C.M.A.No.607 of 2020

VBA (CO)
GN (23/04/2021)



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