

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2458 of 2014

Sivaraj

.. Appellant/Petitioner

Vs.

Metropolitan Transport Corporation,
Rep. by its Managing Director,
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 09.11.2012 made in M.C.O.P.No.3731 of 2010 on the file of Motor Accidents Claims Tribunal, X Additional Court I/C XVI Additional Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondent : Mr.S.S.Swaminathan

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 09.11.2012 made in M.C.O.P.No.3731 of 2010 on the file of Motor Accidents Claims Tribunal, X Additional Court I/C XVI Additional Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.3731 of 2010 on the file of Motor Accidents Claims Tribunal, X Additional Court I/C XVI Additional Court, Chennai. He filed the said claim petition claiming a sum of Rs.14,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.09.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only 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.9,66,250/- 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 sustained crush injury on the left leg which resulted in amputation of left leg below knee. The appellant was earning a sum of Rs.10,000/- per month by working as delivery boy in Departmental Store, Chennai. The Tribunal without considering the same, fixed a sum of Rs.6,000/- as monthly income of the appellant. P.W.2/Doctor has assessed the disability of the appellant as 70%, but the Tribunal reduced the disability to 50%. The Tribunal has not awarded any amounts towards extra nourishment, damages to cloth and loss of amenities. The total compensation 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 appellant has not produced any document to prove that he was earning a sum of Rs.10,000/- per month. In the absence of any material evidence, the Tribunal has rightly fixed the monthly income of the appellant at Rs.6,000/-. The Tribunal after considering the materials available on record, has awarded just compensation. 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 all the materials available on record.

8. It is the contention of the appellant that he was aged 19 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as delivery boy in Departmental Store, Chennai. The appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,000/- as monthly income of the appellant. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- is fixed as monthly income of the appellant. According to the appellant, he sustained crush injury on the left leg and his left leg below knee was amputated. P.W.2/Doctor, who was examined to prove the injuries

sustained by the appellant, examined and assessed the disability of the appellant as 70%. As per Workmen's Compensation Act, amputation below knee amounts to 50% permanent disability. Though the appellant lost his left leg, still there is a scope for earning by engaging in employment. Considering the Workmen's Compensation Act, the Tribunal fixed the disability of the appellant as 50%. The Tribunal adopted multiplier method while awarding compensation towards loss of future earning capacity. The appellant was aged 19 years at the time of accident. The Tribunal applied multiplier '16' which is not correct. As per judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the multiplier applicable for the age group 15 to 20 is '18'. Thus, the amount awarded by the Tribunal towards loss of future earning capacity is modified to Rs.8,64,000/- (Rs.8,000/- X 12 X 18 X 50%).

9. According to the appellant, he has taken treatment in Government Hospital and subsequently, has taken treatment as in-patient in Apollo Hospital from 08.09.2010 to 24.09.2010. The Tribunal has not awarded any amounts towards extra nourishment, damages to clothes and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.15,000/-, Rs.2,000/- and Rs.15,000/- are awarded towards extra nourishment, damages to clothes and loss of amenities respectively. The amount awarded by the Tribunal altogether towards attendant charges and transport expenses is meagre and hence the same is hereby enhanced to Rs.25,000/-. The amounts awarded by the Tribunal under all the 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.	Future loss of earning capacity	5,76,000	8,64,000	Enhanced
2.	Medical expenses	2,35,000	2,35,000	Confirmed
3.	Artificial limb	1,05,250	1,05,250	Confirmed

4.	Pain & sufferings and mental agony	35,000	35,000	Confirmed
5.	Attendant charges and transport expenses	15,000	25,000	Enhanced
6.	Extra nourishment	-	15,000	Granted
7.	Damages to clothes	-	2,000	Granted
8.	Loss of amenities	-	15,000	Granted
	Total	Rs.9,66,250/-	Rs.12,96,250/-	Enhanced by Rs.3,30,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,66,250/- is hereby enhanced to Rs.12,96,250/- 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

//True Copy//

Sub Assistant Registrar

mtl

To

1. The X Additional Judge,
I/C XVI Additional Judge,
The Motor Accident Claims Tribunal
Chennai.

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

+1 cc to M/s.M.Malar, Advocate Sr.No. 22079
+1 cc to M/s.S.S.Swaminathan, Advocate Sr.No. 21586

C.M.A.No.2458 of 2014

RSI (CO)
RMP (21/01/2021)



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