

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4817 of 2019

K.Dinesh

.. Appellant/Petitioner

Vs.

The Managing Director,  
Metropolitan Transport Corporation,  
Pallavan House, Anna 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 24.01.2019 made in M.C.O.P.No.898 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

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 Tribunal in the award dated 24.01.2019 made in M.C.O.P.No.898 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Poonamallee.

2. By consent of both the parties, this appeal is taken up for final hearing at the admission stage itself.

3.The appellant is the claimant in M.C.O.P.No.898 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Poonamallee. He filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.10.2014.

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 Transport

Corporation bus bearing Registration No. TN 01 AN 0157 and directed the respondent to pay a sum of Rs.3,49,724/- 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 at the time of accident, the appellant was aged 25 years, painter and was earning a sum of Rs.18,000/- per month. The Tribunal fixed a meagre sum of Rs.5,000/- as monthly income and granted meagre amount of Rs.2,48,400/- towards loss of income. The Tribunal erred in fixing the disability of the appellant as 23% instead of 100%. The Tribunal failed to award any amounts towards disability and future medical expenses. The amount awarded by the Tribunal under the heads attendant charges, transportation, extra nourishment, loss of amenities and pain and sufferings are meagre and prayed for enhancement of compensation.

7. Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that in the absence of any material evidence to prove the avocation and income, the Tribunal has rightly fixed monthly income of the appellant at Rs.5,000/- per month, applied multiplier method and awarded a sum of Rs.2,48,400/- towards loss of income, which is not meagre. PW.2/Doctor, in his evidence has deposed that the left leg little toe of the appellant was amputated and plastic surgery was done to him, but he did not bring any medical records pertaining to surgery. Hence, PW.2/Doctor has assessed the disability as 3%. The Tribunal erred in fixing the disability as 23%, without any material evidences and hence, the appellant is not entitled for any enhancement 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 the entire materials on record.

9. It is the contention of the appellant that he was aged 25 years at the time of accident and was a painter and was earning a sum of Rs.18,000/- per month. The appellant has not let in any evidence to substantiate the said contention. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal has fixed a sum of Rs.5,000/- as monthly income of the appellant, adopted multiplier method and awarded a sum of Rs.2,48,000/- ( $\text{Rs.5,000/-} \times 18 \times 12 \times 23/100$ ) towards loss of income. The accident has occurred in the year 2012 and the monthly income fixed by the Tribunal is meagre. Hence, a

sum of Rs.7,500/- is fixed as monthly income of the appellant and by applying the multiplier '18', the compensation awarded by the Tribunal towards loss of income is modified to Rs.3,72,600/- [Rs.7,000/- X 12 X 18 X 23/100]. Since the Tribunal has awarded a consolidated sum towards disability and loss of income altogether, this Court is of the opinion that there is no need to award any amount separately towards disability.

10. According to the appellant, he has taken treatment as an in-patient at Rajiv Gandhi Government General Hospital, Chennai from 04.10.2014 to 11.11.2014. The amount awarded by the Tribunal towards attendant charges and extra nourishment are meagre and the same are hereby enhanced to Rs.20,000/- towards extra nourishment and Rs.30,000/- towards attendant charges. The Tribunal has awarded a meagre sum of Rs.25,000/- towards loss of amenities and the same is enhanced to Rs.50,000/-. The amounts awarded by the Tribunal under all the other heads are just and reasonable and 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.    | Loss of income    | 2,48,400/-                      | 3,72,600/-                        | enhanced                               |
| 2.    | Transportation    | 10,000/-                        | 10,000/-                          | confirmed                              |
| 3.    | Attender charges  | 9,250/-                         | 30,000/-                          | enhanced                               |
| 4.    | Medical expenses  | 1,074/-                         | 1,074/-                           | confirmed                              |
| 5.    | Pain & sufferings | 46,000/-                        | 46,000/-                          | confirmed                              |
| 6.    | Extra nourishment | 10,000/-                        | 20,000/-                          | enhanced                               |
| 7.    | Loss of amenities | 25,000/-                        | 50,000/-                          | enhanced                               |
|       | Total             | Rs.3,49,724/-                   | Rs.5,29,674/-                     | enhanced by Rs.1,79,950/-              |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,49,724/- is hereby enhanced to Rs.5,29,674/- 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 the Court fee, if any on the enhanced amount of 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/ claimant 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.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

vkr  
To

1.The III Additional District Court,  
Motor Accident Claims Tribunal,  
Poonamalli.

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

+1 CC to Mr.S.Sivakumar, Advocate sr 1126

+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 239

C.M.A.No.4817 of 2019

NMI (CO)  
SP(05/08/2020)

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