

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1416 OF 2017

V.Sivasubramani

.. Appellant/
Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
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 10.03.2014 made in M.C.O.P.No.2836 of 2011 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan

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 10.03.2014 made in M.C.O.P.No.2836 of 2011 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.2836 of 2011 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.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.06.2011.

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.2,87,050/- 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 sustained severe injury in pelvic and fracture in right superior and inferior pubic rami and fracture in right acetabulum and pelvic displacement and comminuted fracture seen in L5 transverse right sacralala and multiple injuries all over his body. The appellant proved the same by examining P.W.2/Doctor. P.W.2/Doctor has assessed the disability of the appellant as 50%. The Tribunal without giving valid reason, reduced the same to 45% and awarded a meagre sum of Rs.90,000/- towards disability. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and future medical expenses. The appellant was working as Technician in Mother Bio Tech Services, Perambur, Chennai and was earning a sum of Rs.15,000/- per month and the compensation awarded by the Tribunal towards loss of income is meagre. The amounts awarded by the Tribunal towards extra nourishment, damages to clothes, medical expenses and pain and sufferings are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the appellant has not produced any material evidence to prove the avocation and income and hence, the compensation awarded by the Tribunal towards loss of income is not meagre. The Tribunal reduced the percentage of disability assessed by P.W.2/Doctor from 50% to 45% on the ground that P.W.2/Doctor is not the Doctor who gave treatment to the appellant and the disability has been assessed after 3 years. 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 P.W.2/Doctor has assessed that the appellant suffered 50% disability. The respondent-Transport Corporation did not let in any evidence to disprove the evidence of P.W.2/Doctor and Ex.P6/disability certificate. The Tribunal reduced the percentage of disability to 45% on the ground that P.W.2/Doctor has not

given treatment to the appellant and he has assessed the disability after a lapse of 3 years. Therefore, the appellant is entitled to compensation for 50% disability. The accident occurred in the year 2011 and the Tribunal has awarded meagre sum of Rs.2,000/- per percentage of disability and the same is enhanced to Rs.3,000/- per percentage of disability. In view of the above, the compensation awarded by the Tribunal towards disability is modified to Rs.1,50,000/- (Rs.3,000/- X 50% of disability). The appellant has taken treatment in the Aysha Hospitals Private Limited as in-patient from 11.06.2011 to 26.06.2011 and the Tribunal has not awarded any amounts towards attendant charges and loss of amenities. Therefore, a sum of Rs.10,000/- each is awarded towards attendant charges and loss of amenities respectively. The appellant has not produced any medical records to show that he requires further treatment. Therefore, the appellant is not entitled to any amount towards future medical expenses.

9.It is the contention of the appellant that he was working as Technician in Mother Bio Tech Services, Perambur, Chennai and was earning a sum of Rs.15,000/- per month. He failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant and awarded compensation for loss of income for five months. The accident occurred in the year 2011 and the notional income fixed by the Tribunal is meagre. Considering the age of the appellant, year of accident and nature of work done by the appellant, a sum of Rs.8,000/- per month is fixed as notional income of the appellant. Due to the injuries sustained by him in the accident, he would not have attended his work atleast for a period of six months. In view of the same, the compensation awarded by the Tribunal towards loss of income is modified to Rs.48,000/- (Rs.8,000/- X 6 months). The amounts awarded by the Tribunal towards extra nourishment and damages to clothes are meagre and the same are enhanced to Rs.15,000/- and Rs.1,000/- respectively. The amounts awarded by the Tribunal towards transportation, medical expenses and pain and sufferings are just and reasonable and hence, the same are 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	90,000/-	1,50,000/-	Enhanced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed

3.	Extra nourishment	7,000/-	15,000/-	Enhanced
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Loss of income	25,000/-	48,000/-	Enhanced
6.	Medical expenses	1,29,506/-	1,29,506/-	Confirmed
7.	Damages to clothes	500/-	1,000/-	Enhanced
8.	Attendant charges	-	10,000/-	Granted
9.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.2,87,006/- rounded off to Rs.2,87,050/-	Rs.3,98,506/- rounded off to Rs.3,98,500/-	enhanced by Rs.1,11,450/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,87,050/- is hereby enhanced to Rs.3,98,500/- 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.2836 of 2011 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, 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

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To

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

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

+1cc to Mr.K.V.Muthu Visakan, Advocate, S.R.No.10345
+1cc to Mr.S.Sivakumar, Advocate, S.R.No.10946

C.M.A.No.1416 of 2017

BR (CO)
CS/23/04/2021



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