

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4632 of 2019

T.Prasath

.. Appellant

Vs.

The Managing Director
Tamil Nadu State Transport Corporation
Kumbakonam, Thanjavur District. .. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.03.2019 made in M.C.O.P.No.1349 of 2016 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.N.Eswaran
For Respondent : Mr.D.Venkatachalam

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 07.03.2019 made in M.C.O.P.No.1349 of 2016 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

2.The appellant is claimant in M.C.O.P.No.1349 of 2016 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal. He filed the 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 11.05.2016.

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 to pay a sum of Rs.2,52,840/- 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/claimant contended that the appellant was aged 29 years at the time of accident and was earning a sum of Rs.20,000/- per month by doing business. Due to the accident, the appellant has sustained fracture on right leg femur, neck and grievous injuries all over his body. He took treatment as in-patient in Kurinji hospital, Salem, from 12.05.2016 to 18.05.2016, underwent surgery and screws & plates were fixed. P.W.2/Doctor in his evidence has deposed that the appellant has difficulty in walking, standing and sitting and assessed the disability of the appellant as 20%. The appellant has marked Ex.P2/wound certificate, Ex.P4/discharge summary and Ex.P8/medical bills to prove his injuries. After the accident, the appellant could not move anywhere without the help of others and could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning capacity. The Tribunal has not awarded any amount towards loss of amenities and attendant charges. The appellant is taking treatment till today and the Tribunal ought to have awarded compensation towards future medical expenses. The amounts 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 marked any document to prove his avocation and income. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.5,000/- as monthly income of the appellant and awarded a sum of Rs.10,000/- towards loss of income for a period of two months. The appellant has not proved that he suffered functional disability and hence the Tribunal has rightly applied percentage method and awarded a sum of Rs.60,000/- (Rs.3,000/- X 20%) towards disability. 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 and perused all the materials available on record.

8. It is the contention of the appellant that at the time of accident, he was earning a sum of Rs.20,000/- per month by doing business. The appellant has not marked any document to prove his avocation and income. In the absence of any material 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 and awarded a sum of Rs.10,000/- (Rs.5,000/- X 2) towards loss of income for a period of two months. The accident is of the year 2016 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- is fixed as monthly income of the appellant. According to the appellant, he has sustained fractures of right leg femur and neck, underwent surgery and screws & plates were fixed. He has marked Ex.P2/wound certificate, Ex.P4/discharge summary and Ex.P8/medical bills to prove the injuries and examined P.W.2/Doctor, who has assessed the disability of the appellant as 20%. He took treatment as in-patient in Kurinji hospital, Salem from 12.05.2016 to 18.05.2016. Due to the injuries, the appellant would not have attended his work atleast for a period of three months. Therefore, the appellant is entitled to a sum of Rs.30,000/- (Rs.10,000/- X 3) towards loss of income for three months. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. In the absence of any material evidence, the Tribunal has accepted the disability assessed by P.W.2/Doctor and awarded a sum of Rs.60,000/- (Rs.3,000/- X 20%) towards disability by awarding Rs.3,000/- per percentage of disability, which is proper. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damage to clothes. Considering the nature of injuries sustained and period of treatment taken by the appellant, this Court awards a sum of Rs.15,000/-, Rs.10,000/- and Rs.2,000/- towards attendant charges, loss of amenities and damage to clothes respectively. Though the appellant has contended that he is now taking treatment for his injuries, he has not produced any document to prove the same. Therefore, the appellant is not entitled to any amount towards future medical expenses. 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	10,000	30,000	Enhanced
2.	Transport to hospital	5,000	5,000	Confirmed
3.	Extra nourishment	10,000	10,000	Confirmed
4.	Medical bills	1,37,840	1,37,840	Confirmed

5.	Permanent disability	60,000	60,000	Confirmed
6.	Pain and suffering	30,000	30,000	Confirmed
7.	Attendant charges	-	15,000	Granted
8.	Loss of amenities	-	10,000	Granted
9.	Damage to clothes	-	2,000	Granted
	Total	2,52,840	2,99,840	Enhanced by Rs.47,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,52,840/- is hereby enhanced to Rs.2,99,840/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant 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/claimant 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 (CS IV)

//True Copy//

Sub Assistant Registrar

kj
To

1. The Chief Judicial Magistrate
The Motor Accident Claims Tribunal
Namakkal.

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

+2ccs to Mr.C.Parnaeedharan , Advocate SR.No. 2069
+1cc to Mr.D.Venkatachalam , Advocate SR.No. 905

C.M.A.No.4632 of 2019

A.SK(02/09/2020)