

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2571 of 2017

Vijay

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation, (VPM) Ltd.,
(Kumbakonam Division) Ltd,
Perya Malgu Parai,
Trichy.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2017 made in M.C.O.P.No.538 of 2014 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

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 04.01.2017 made in M.C.O.P.No.538 of 2014 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.538 of 2014 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.01.2014.

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.1,23,000/- 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 doing coolie work and was earning a sum of Rs.10,000/- per month. He has sustained fracture of 7th and 8th ribs, right shoulder contusion, right thigh, right ankle, right forearm and right elbow and multiple injuries all over the body. P.W.2/Doctor has assessed the disability of the appellant as 40%, but the Tribunal fixed the disability at 25% only. Due to injuries, the appellant has completely lost his earning capacity. Hence, the Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning capacity. 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 filed any document to prove his avocation and income. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.6,500/- as monthly income of the appellant, which is not meagre. 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.75,000/- towards 25% disability. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. 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. From the materials available on record, it is seen that according to the appellant, he was aged 18 years and was doing coolie work and was earning a sum of Rs.10,000/- per month. In the absence of any evidence with regard to loss of income, the Tribunal has fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.6,500/- towards loss of income for a period of one month. The accident is of the year 2014 and the monthly income of the appellant fixed by the Tribunal is meagre. Hence, a sum of Rs.8,500/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work at least for a period of six months. Therefore, the appellant is entitled to a sum of Rs.51,000/- (Rs.8,500/- X 6) towards loss of income for six months. The appellant examined one Dr.J.R.R.Thiagarajan as P.W.3, who assessed the disability

of the appellant as 40%. The Tribunal reduced the disability to 25% holding that the percentage of disability assessed by P.W.3/Doctor is slightly on the higher side and awarded a sum of Rs.75,000/- (Rs.3,000/- X 25%) towards disability, which is not proper. The appellant is entitled to compensation for 40% disability and hence a sum of Rs.1,20,000/- (Rs.3,000/- X 40%) is awarded towards disability. According to the appellant, he took treatment as in-patient in the hospital for 5 days. The amounts awarded by the Tribunal towards extra nourishment, transportation, damages to cloth and attendant charges are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/-, Rs.5,000/-, Rs.3,000/- and Rs.10,000/- are awarded towards extra nourishment, transportation, damages to cloth and attendant charges respectively. 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
1.	Disability	75,000	1,20,000	Enhanced
2.	Pain and suffering	25,000	25,000	Confirmed
3.	Extra nourishment	2,500	10,000	Enhanced
4.	Transport to hospital	2,500	5,000	Enhanced
5.	Damages to clothes	500	3,000	Enhanced
6.	Attendant charges	1,000	10,000	Enhanced
7.	Medical expenses	5,000	5,000	Confirmed
8.	Future medical expenses	2,500	2,500	Confirmed
9.	Loss of income	6,500	51,000	Enhanced
10.	Loss of amenities	2,500	2,500	Confirmed

	Total	Rs.1,23,000/-	Rs.2,34,000/-	Enhanced by Rs.1,11,000/-
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9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,23,000/- is hereby enhanced to Rs.2,34,000/- 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(Insp.Cell)

//True copy//

Sub Assistant Registrar

mtl

To

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

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

+1cc to M/s.M.Malar, Advocate SR.No.1799

+1cc to Mr.D.Venkatachalam, Advocate SR.No.1587

C.M.A.No.2571 of 2017

GMR (CO)
GMY (03/09/2020)