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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.642 of 2017

E.Murugan ... Appellant /Petitioner

Vs.

The Managing Director,  
Metropolitan Transport Corporation Limited,  
Chennai. ... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and Decreeal order dated 14.09.2010 made in M.C.O.P.No.3919 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.S.Parthasarathy

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 14.09.2010 made in M.C.O.P.No.3919 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3919 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.08.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the 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.1,56,000/- as compensation to the appellant/claimant.



4. Not being satisfied with the amount 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 was owner of the Bullock Cart and was earning a sum of Rs.6,000/- per month, whereas the Tribunal fixed a meagre sum of Rs.3,000/- per month as notional income of the appellant. The appellant suffered fracture of right leg and dislocation of right hip and undergone operation twice. The appellant suffered 55% functional disability and his movement restricted to an extent of 30 degree and the Tribunal ought to have adopted multiplier method for awarding compensation towards disability. The amounts awarded by the Tribunal under different heads 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 Tribunal has awarded excessive sum of Rs.1,10,000/- towards 55% disability as assessed by P.W.3/Doctor and hence, the appellant is not entitled to any enhancement towards disability by adopting multiplier method. The appellant has not proved his avocation and income by producing valid documents. In the absence of any material evidence to prove the avocation and income of the appellant, a sum of Rs.3,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. The amounts awarded by the Tribunal under different heads are not meagre and 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 second respondent and perused the entire materials on record.

8. It is the contention of the appellant that he suffered fracture of acetabulum right with fracture of both bones right leg and dislocation of right hip and he has underwent surgery twice on 02.08.2007 and on 20.08.2007. His movement was restricted to an extent of 30 degree. To prove the said contention, he examined P.W.3/Doctor. P.W.3/Doctor certified that appellant suffered 55% disability and deposed to that effect. The Tribunal has awarded a sum of Rs.1,10,000/- for 55% disability at the rate of Rs.2,000/- per percentage of disability, which is proper. The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation by adopting multiplier method. From the award of the Tribunal it is seen that the appellant has taken treatment in the hospital as in-patient for 46 days on two occasions from 02.08.2007 to 05.09.2007 and from 31.01.2008 to 12.02.2008. The



Tribunal has not awarded any amount towards attendant charges. Therefore, a sum of Rs.20,000/- is awarded towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a meagre sum of Rs.5,000/- awarded by the Tribunal towards extra nourishment is enhanced to Rs.25,000/-.

9.It is the contention of the appellant that he was owner of the Bullock Cart and was earning a sum of Rs.6,000/- per month. 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.3,000/- per month as notional income of the appellant. The accident occurred in the year 2007 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.5,000/- per month is fixed as notional income of the appellant. Considering the nature of injuries and disability suffered by the appellant, he would not have worked atleast for a period of six months. Hence, the compensation awarded by the Tribunal towards loss of income is modified to Rs.30,000/- [Rs.5,000/- X 6 months]. The compensation awarded by the Tribunal under other heads 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          | 1,10,000/-                      | 1,10,000/-                        | Confirmed                              |
| 2.    | Pain and sufferings | 25,000/-                        | 25,000/-                          | Confirmed                              |
| 3.    | Medical expenses    | 4,000/-                         | 4,000/-                           | Confirmed                              |
| 4.    | Extra nourishment   | 5,000/-                         | 25,000/-                          | Enhanced                               |
| 5.    | Loss of income      | 9,000/-                         | 30,000/-                          | Enhanced                               |
| 6.    | Damage to clothes   | 1,000/-                         | 1,000/-                           | Confirmed                              |
| 7.    | Attendant charges   | -                               | 20,000/-                          | Granted                                |
| 8.    | Transportation      | 2,000/-                         | 2,000/-                           | Confirmed                              |
|       | Total               | Rs.1,56,000/-                   | Rs.2,17,000/-                     | enhanced by Rs.61,000/-                |

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,56,000/- is hereby enhanced to Rs.2,17,000/- 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.3919 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled for any interest for Rs.61,000/- the amount now enhanced by this Court, as per the order of this Court dated 04.01.2017 made in M.P.No.1 of 2013 in C.M.A.SR.No.85335 of 2013. No costs.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

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

+lcc to Mr.S.Parthasarathy, Advocate Sr.2517  
+lcc to M.rS.Sivakumar, Advocate Sr.2416

C.M.A.No.642 of 2017

rsk[co]  
srg 21/08/2020