

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.982 of 2017

C.Balakrishnan

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Limited,
Villupuram.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2016 made in M.C.O.P.No.1385 of 2015 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Suryanarayanan

For Respondent : Mr.K.J.Sivakumar

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 22.09.2016 made in M.C.O.P.No.1385 of 2015 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1385 of 2015 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.12.2014.

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.3,45,000/- 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 has suffered head injuries and fracture in both bones right leg, nasal bone zygoma. Due to the fracture, he could not continue his work as earlier. The appellant examined P.W.2/Doctor to prove the nature of injuries and disability suffered by him. The Tribunal reduced the percentage of disability from 65% to 60% and awarded a sum of Rs.1,80,000/- towards disability. The Tribunal ought to have applied multiplier method and granted compensation towards disability. The Tribunal failed to award any amount towards loss of earning power, loss of earning during treatment period, loss of amenities and mental agony. 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 contended that the appellant has not proved that he suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method applied by the Tribunal is proper. 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. From the materials available on record, it is seen that the appellant has contended that he suffered head injuries, fracture and multiple injuries all over the body. P.W.2/Doctor has assessed the disability of the appellant as 65%. The Tribunal has reduced the disability to 60% and awarded Rs.1,80,000/- towards disability at the rate of Rs.3,000/- per percentage, on the ground that the disability assessment differs from one doctor to another doctor to the extent of 5% and the said reason is proper. The appellant has not proved that he suffered functional disability and hence he is not entitled to compensation by applying multiplier method. According to the appellant, he was working as a machine operator and was earning a sum of Rs.20,000/- per month. To prove the avocation and

income of the appellant, he has produced the driving license/ Ex.P9. The Tribunal has fixed the income of the appellant at Rs.7,500/- per month but awarded only a sum of Rs.15,000/- towards loss of income for a period of two months. The accident is of the year 2014 and the income fixed by the Tribunal is meagre. A sum of Rs.12,000/- is fixed as monthly income of the appellant. Due to the fracture, the appellant would not have attended his work atleast for a period of four months. Therefore, the appellant is entitled to a sum of Rs.48,000/- (Rs.12,000/- X 4) towards loss of income for four months. A sum of Rs.25,000/- awarded by the Tribunal towards loss of amenities is excessive and the same is hereby reduced to Rs.10,000/-. The Tribunal has not awarded any amount towards damage to clothes. A sum of Rs.1,000/- is awarded towards damage to clothes. The amounts awarded by the Tribunal under 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 or reduced
1.	Transportation, nourishing food and miscellaneous expenditure	50,000	50,000	Confirmed
2.	Medical expenses	20,000	20,000	Confirmed
3.	Attender charges	5,000	5,000	Confirmed
4.	Damages to pain, suffering and Trauma	50,000	50,000	Confirmed
5.	Disability	1,80,000	1,80,000	Confirmed
6.	Loss of earning during the period of treatment	15,000	48,000	Enhanced
7.	Loss of amenities	25,000	10,000	Reduced
8.	Damage to clothes	-	1,000	Granted

	Total	3,45,000	3,64,000	Enhanced by Rs.19,000/-
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9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,45,000/- is hereby enhanced to Rs.3,64,000/- 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 by making necessary applications before the Tribunal. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vkr
To

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

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

+1 cc to Mr.K.Suryanarayanan Advocate sr2541

C.M.A.No.982 of 2017

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