

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4637 OF 2019

Peter Raj

... Appellant/Petitioner

Vs.

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram.

... Respondent/Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.11.2017 made in M.C.O.P.No.31 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court, Kallakurichi, Villupuram District.

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 04.11.2017 made in M.C.O.P.No.31 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court, Kallakurichi, Villupuram District.

2.The appellant is claimant in M.C.O.P.No.31 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court, Kallakurichi, Villupuram District. The appellant filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.07.2011.

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 to pay a sum of Rs.2,88,000/- 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 earning a sum of Rs.6,000/- per month by working as a mason. The accident is of the year 2011 and the Tribunal ought to have fixed the monthly income of the appellant at Rs.10,000/- by considering the cost of living. In the accident, the nerves in the left hand of the appellant got damaged resulting in complete loss of use of left hand. PW2 / Doctor has assessed the disability of the appellant as 80%. The appellant has marked Ex.P4 / X-ray and Ex.P5 / disability certificate to prove the injuries. The Tribunal without giving any reason, reduced the disability to 75% and awarded a sum of Rs.2,25,000/- towards disability at the rate of Rs.3,000/- per percentage of disability, which is meagre. The appellant suffered functional disability and the Tribunal ought to have adopted multiplier method. The Tribunal has not granted any enhancement towards future prospects. 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 in the claim petition, the appellant has claimed that he was earning a sum of Rs.6,000/- per month by working as a mason. The Tribunal accepted the same and rightly fixed a sum of Rs.6,000/- as monthly income of the appellant. The appellant has not proved that he suffered functional disability and therefore, the Tribunal rightly applied multiplier method while awarding compensation towards disability. The Tribunal after considering all the materials available on record in proper perspective, 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/Transport Corporation and perused all the materials available on record.

8. It is the contention of the appellant that he was earning a sum of Rs.6,000/- per month by working as a mason. The Tribunal accepting the same, fixed a sum of Rs.6,000/- as monthly income of the appellant and awarded a sum of Rs.18,000/- (Rs.6,000/- x 3) towards loss of income for three months. Due to the injuries sustained by the appellant, he would not have attended his work at least for six months. Therefore, a sum of Rs.36,000/- (Rs.6,000/- X 6) is awarded towards loss of income

for six months. According to the appellant, in the accident, his nerves in the left hand got damaged resulting in complete loss of use of left hand. PW2 / Doctor has assessed the disability of the appellant as 80% and marked Ex.P4/ X-ray and Ex.P5 / disability certificate to prove the injuries. The Tribunal considering Exs.P2 & P3/discharge summaries and Ex.P5/disability certificate, reduced the disability to 75% and awarded a sum of Rs.2,25,000/- (Rs.3,000/- x 75%) at the rate of Rs.3,000/- per percentage of disability. The accident is of the year 2011 and the amount fixed by the Tribunal per percentage of disability is proper and the same does not warrant any interference by this Court. The appellant has taken treatment in the hospital as in-patient from 18.07.2011 to 01.08.2011. The Tribunal has not awarded any compensation towards attendant charges and hence, a sum of Rs.10,000/- is awarded towards attendant charges. The Tribunal has not awarded any compensation towards loss of amenities and damage to clothes and hence, a sum of Rs.10,000/- and Rs.1,000/- are awarded towards loss of amenities and damage to clothes 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 or reduced
1.	Disability	2,25,000	2,25,000	Confirmed
2.	Loss of income	18,000	36,000	Enhanced
3.	Transportation charges	5,000	5,000	Confirmed
4.	Extra nourishment	10,000	10,000	Confirmed
5.	Pain & suffering	30,000	30,000	Confirmed
6.	Attendant charges	-	10,000	Granted
7.	Loss of amenities	-	10,000	Granted
8.	Damage to clothes	-	1,000	Granted
	Total	Rs.2,88,000/-	Rs.3,27,000/-	Enhanced by Rs.39,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,88,000/- is hereby enhanced to Rs.3,27,000/- 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. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period on the enhanced amount of Rs.39,000/- as per the order of this Court dated 02.12.2019 made in C.M.P.No.25020 of 2019 in C.M.A.No.SR.145449 of 2019. 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

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
The Motor Accident Claims Tribunal
Kallakurichi, Villupuram.
2. The Section Officer
V.R.Section, High Court, Chennai.

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.7723
+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.1728

C.M.A.No.4637 of 2019

EV(CO)
CS/10/09/2020

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