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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.1454 OF 2013

Minor Rajesh
rep. by his father Durairaj ...Appellant / Petitioner

Vs.

The Managing Director
Tamil Nadu State Transport
Corporation, Villupuram ...Respondent / Respondent

Prayer : This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 12.12.2011 passed in MCOP No.72 of 2009 by the Principal Sub Court, (Motor Accident Claims Tribunal), Vridhachalam.

For Appellant : Mr.S.Udayakumar

For Respondent : Mr.C.S.K.Sathish

J U D G M E N T

Challenging the judgment and decree passed by the Tribunal awarding a compensation of Rs.1,25,794/-, the claimant/appellant is before this court to enhance the compensation.

2. The minor claimant/appellant filed a claim petition before the Tribunal seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 28.01.2009.

3. The brief case of the claimants is as follows. On 28.01.2009, at about 8.30 hours, the minor claimant was travelling in a bus bearing Registration No.TN-32-N-2496 towards Pennadam from Periyakosapallam and while it reached near Maligaikottam bus stop, the bus conductor suddenly blowing long whistle and as per his direction, the bus driver suddenly applied brake. As a result, the petitioner was thrown out of the bus who was standing inside the bus and thereby, he sustained



injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the bus was the cause of accident and since the respondent Corporation is the owner of the vehicle, they are liable to pay compensation to the claimant.

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4. The respondent Corporation resisted the claim petition before the Tribunal by filing counter affidavit.

5. Before Tribunal, on the side of the minor claimant/appellant, the claimant and the doctor, who examined the claimant were examined as PW1 and PW2 and Ex.P1 to Ex.P11 were marked. On the side of the respondent, the driver of the respondent was examined as RW1, however no document was marked.

6. After analysing the evidence on record, the Tribunal has awarded a compensation of Rs.1,25,794/- under the following heads.

Heads	Amount in Rs.
Disability	84,000
Loss of Income	--
Pain and suffering	10,000
Medical Expenses	23,794
Attender charges	3,000
Nutritious Food	--
Ambulance	5,000
Total	1,25,794

7. Heard the learned counsel appearing for the appellant and the respondent/Transport Corporation and also I have perused the material on record.

8. The learned counsel appearing for the appellant would submit that the quantum of compensation awarded towards negligence is very low and the Tribunal has not followed the multiplier method while fixing the quantum of compensation and also the compensation awarded under other heads are also very meagre and hence, he seeks for enhancement of compensation.

9. The learned counsel appearing for the respondent/Transport Corporation submitted that inspite of several warnings by both the driver and conductor, the students including the claimant who were hanging in the foot board never heeded and due to that, the claimant had fallen down and invited the accident and therefore, the entire negligence is only on the part of the claimant and hence, the respondent is not liable to pay any compensation to the claimant.



10. Now the points for determination is

(i) Whether the compensation awarded by the Tribunal has to be enhanced?

11. According to the appellant, due to the accident, he has sustained fracture on his left fore arm and injuries all over the body. PW2- doctor who was examined on the side of the claimant deposed before the Tribunal that due to the injuries, the claimant has suffered partial permanent disability at 42%. Based on the evidence of PW2 and the disability certificate Ex.P10, the Tribunal has awarded only a sum of Rs.1,25,794/- as compensation, which is very meagre amount. At the time of accident, the claimant was aged about 13 years and he has suffered 42% disability and his entire future would be affected for the disability suffered by him and he was unable to move freely with limbs due to the injuries caused to the claimant and therefore, fixing Rs.2000/- per percentage for the partial permanent disability by the Tribunal is very low. The disability caused to the claimant is at the tender age and he would suffer more complication in future to lead a normal life and to survive his livelihood. Therefore, reasonable percentage has to be fixed for the 42% disability. But, taking note of the age of the claimant and his future would be affected due to his disability, it is appropriate for this Court to fix Rs.3000/- per percentage and by taking Rs.3000/- for the compensation of disability, it comes to Rs.1,26,000/- (Rs.3,000 x 42). As far as the other heads viz., pain and suffering and attender charges are concerned, the Tribunal has awarded very meagre amount and this Court is of the view that it is just and reasonable to enhance the compensation of Rs.20,000/- towards "Pain and Suffering, Rs.27,000/- towards " Attender Charges" respectively. Apart from that, this Court is inclined to award Rs.5,000/- towards "Extra Nourishment" and Rs.5,000/- towards "Loss of Amenities". Accordingly, the revised compensation awarded under various heads is extracted hereunder.

Heads	Compensation awarded by the Tribunal	Compensation modified by this court
Partial Permanent disability	84,000	1,26,000 (3000 x 42)
Pain & suffering	10,000	20,000
Medical Expenses	23,794	23,794
Attender charges	3,000	27,000 (9000 x 3)
Extra Nourishment	--	5,000
Transport charges	5,000	5,000



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Heads	Compensation awarded by the Tribunal	Compensation modified by this court
Loss of amenities	--	5,000
Total	1,25,794	2,11,794

12. In the result,

(i) The appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 1,25,794/- to Rs.2,11,794/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation. No costs.

(ii) The respondent/Transport Corporation is directed to deposit the enhanced compensation of Rs.2,11,794/- along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, within a period of 12 weeks from the date of receipt of a copy of this order, less the amount if already deposited.

(iii) The appellant/claimant is directed to pay the necessary court fee, if any for the enhanced compensation and the Registry is directed to draft the decree, after receipt of necessary court fee.

(iv) On such deposit being made by the Respondent, the claimant is entitled to withdraw the same, after following due process of law.

s/d-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Principal Sub Judge,
(Motor Accident Claims Tribunal),
Vridhachalam.

2.The Section Officer,
V.R.Section,
Madras High Court, Chennai-104.

+1cc to Mr.S.Udayakumar, Advocate SR.No.18821

CMA No.1454 of 2013

SSD(CO)
RVM(18/11/2021)