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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA Nos.136 and 150 of 2016
and
CMP No.1196 of 2016

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram.

... Appellant in
CMA No.136 of 2016/ Respondent
and
respondent in
CMA No.150 of 2016/ Respondent
versus

Kesavan

... Appellant
in
CMA No.150 of 2016/ Petitioner
and
respondent in
CMA no.136 of 2016/ Petitioner

Prayer in CMA No.136 of 2016 : Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
judgment and decree dated 23.04.2014 made in M.C.O.P. No.4064
of 2012 on the file of the Motor Accident Claims Tribunal, IV
Small Causes Judge, Chennai.

Prayer in CMA No.150 of 2016 : Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
fair and decreetal order dated 23.04.2014 in MCOP No.4064 of
2012 on the file of the Motor Accidents Claims Tribunal / IV
Judge, Court of Small Causes/Chennai.

For Appellant in CMA No.130 of 2016
and respondent in CMA No.150 of 2016 : Ms.Ramya V.Rao

For Appellant in CMA No.150 of 2016
and respondent in CMA No.130 of 2016 : Mr.K.J.Sivakumar



COMMON JUDGMENT
(Heard Video Conference)

C.M.A. No.136 of 2016 has been filed by the Transport Corporation challenging its liability to pay the compensation to the respondent / claimant under the impugned award dated 23.04.2014 passed by the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai in MCOP No.4064 of 2012.

2.The claimant, who is the respondent in CMA No.136 of 2016 has challenged the very same impugned award seeking for enhancement of compensation in CMA No.150 of 2016.

3. The Tribunal under the impugned award dated 23.04.2014, directed the Transport Corporation to pay the claimant a compensation of Rs.1,66,200/- together with interest and costs as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of earning	25,000
Transport to hospital	10,000
Extra nourishment	10,000
Medical expenses	6,195
Loss of amenities	5,000
Pain and suffering	30,000
Disability of 40% at Rs.2,000/- per percentage	80,000
Total	1,66,195
Rounded off	1,66,200

4. Heard Mr.K.J.Sivakumar, learned counsel for the appellant / Transport Corporation in CMA No.136 of 2016 and the respondent in CMA No.150 of 2016 and Ms.Ramya V.Rao, learned counsel for the appellant / claimant in CMA No.150 of 2016 and the respondent in CMA No.136 of 2016.

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. The appellant in CMA No.150 of 2016, who is the claimant was a Makeup Artiste, aged 34 years and he sustained fracture of both bones in the left leg as a result of an accident caused by a bus owned by the respondent in CMA No.150 of 2016 / Transport Corporation on 05.03.2010.

7. Before the Tribunal, the claimant has filed 20 documents which were marked as Exs.P1 to P20 and two witnesses were examined on his side viz., the claimant himself as PW1 and the Doctor, who examined him as PW2. On the side of the



respondent / Transport Corporation, neither any document filed nor any document was examined before the Tribunal.

8. Ex.P6, discharge summary issued by Sri Ramchandra Medical Centre confirms that the claimant had taken inpatient treatment from 26.07.2010 to 07.08.2010. Thereafter, he had taken followup treatment as an inpatient in the very same hospital from 28.10.2010 to 30.10.2010, as seen from Ex.P7, discharge summary. He had undergone a surgery and bone grafting in his left leg was also performed. As seen from the evidence available on record, he has also been taking physiotherapy treatment. The Doctor(PW2) has assessed the disability of the appellant/claimant at 45% and he has stated that the claimant had suffered fracture of both bones in his left leg and a surgery was also performed on him with implantation, which are still there. According to the Doctor, the fracture bones of the claimant are mal-united and due to the same, there will be pain and stiffness in the claimant's left leg and his movements will be restricted. The Tribunal has awarded a compensation of Rs.25,000/- to the claimant towards loss of income during his period of treatment, which in the considered view of this Court is low and it has to be enhanced. After giving due consideration to the avocation of the claimant and the nature of the injuries sustained by him as a result of an accident, as indicated supra, this Court is of the considered view that atleast for a period of nine months, he would have been unable to perform his regular avocation as a Makeup Artiste. The Tribunal has not determined the notional monthly income of the claimant. The accident happened on 05.03.2010, this Court after giving due consideration to the materials and evidence available on record fixes the notional monthly income of the claimant at Rs.8,000/- and determines the loss of income during the period of treatment at Rs.72,000/-, calculated at Rs.8,000/-p.m., for a period of 9 months.

9. The Tribunal has assessed the disability of the appellant / claimant at 40% instead of 45% assessed by the Doctor (PW2). No reasons have been given by the Tribunal for reducing the disability from 45% to 40%. After giving due consideration to the nature of the injuries sustained by the appellant / claimant and the surgeries performed on him as well as the period of hospitalisation, this Court accepts the disability certificate of the Doctor (PW2) and therefore, fixes the disability of the appellant / claimant at 45% and not 40% has erroneously determined by the Tribunal. The accident happened in the year 2010. After giving due consideration to the year of the accident, this Court enhances the disability compensation to Rs.1,35,000/- calculated at Rs.3,000/- per percentage of disability for the 45% disability assessed by this Court instead of Rs.80,000/- fixed by the Tribunal, calculated at Rs.2,000/- per percentage of disability for the 40% disability assessed by the Tribunal.



10. With regard to the compensation awarded by the Tribunal towards medical bills at Rs.6195/-, Rs.10,000/- towards transportation and Rs.10,000/- towards extra nourishment are concerned, the same is a just compensation and therefore, the same is confirmed by this Court. Similarly, the compensation awarded by the Tribunal towards Pain and suffering at Rs.30,000/- is also confirmed by this Court.

11. However, the Tribunal has failed to award any compensation towards attender charges and future medical expenses. If the nature of injuries sustained by the claimant and the long period of his hospitalisation as well as his disability were duly considered, the Tribunal ought to have granted compensation towards future medical expenses as well. However, the same has not been granted by the Tribunal. Accordingly, this Court awards a compensation of Rs.10,000/- each towards loss of attender charges and future medical expenses to the claimant.

12. The Tribunal has also awarded only a meagre compensation of Rs.5,000/- to the claimant towards loss of amenities, limbing and shortening, which has necessarily to be enhanced. Accordingly, this Court enhances, the same to Rs.20,000/- from Rs.5,000/- fixed by the Tribunal.

13. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of earning # Rs.8,000/- x 9	25,000	72,000 #
Transport to hospital	10,000	10,000
Extra nourishment	10,000	10,000
Medical expenses	6,195	6,195
Loss of amenities	5,000	20,000
Pain and suffering	30,000	30,000
Disability of * 40% at Rs.2,000/- per percentage ## Rs.3,000/- x 45%	80,000 *	1,35,000 ##
Attender charges	-	10,000
Future medical expenditure	-	10,000
Total	1,66,195	3,03,195

14. Since enhancement of compensation has been granted in favour of the claimant / appellant in CMA No.150 of 2016, connected C.M.A. No.136 of 2016 filed by the Transport Corporation challenging the very same award does not deserve any merit and it has to be dismissed.



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15. In the result, the appeal filed by the Transport Corporation in CMA No.136 of 2016 is dismissed and the appeal filed by the claimant in CMA No.150 of 2016 is partly allowed by enhancing the compensation from Rs.1,66,195/- to Rs.3,03,195/-. No costs. Consequently, connected miscellaneous petition is closed.

16. The appellant in CMA No.136 of 2016 as well as the respondent in CMA No.150 of 2016 is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.4064 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Judge, Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondent in CMA No.136 of 2016 as well as appellant in CMA No.150 of 2016/claimant, through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant in CMA No.150 of 2016 before receiving the copy of this Judgment.

Sd/-

Assistant Registrar(TNMCC)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Chief Judge,

IV Court of Small Causes,

Motor Accident Claims Tribunal,

Chennai.

2. The Section Officer,

V.R. Section

High Court of Madras, Chennai - 104.

+2 ccs to M/S.Ramya V.Rao ., Advocate Sr.NO.35517

+1 cc to Mr.K.J.Sivakumar, Advocate Sr.NO.35692

CMA Nos.136 and 150 of 2016

SR(CO)

A.SK(21.10.2021)