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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 30.11.2021

C O R A M

THE HONOURABLE Mrs. JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 1245 of 2018

K.Mohammed Ali

..Appellant/claimant

Vs

1.The Assistant Executive Engineer (MV)

North Chennai Depot,
Corporation of Chennai,
61 Basin Bridge Road
Chennai 600 021.

2.The Commissioner,

Corporation of Chennai
Ripon Building
Poonamalee High Road
Chennai 600 003.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed against the judgment and decree dated 19.01.2018 made in MACT O.P.No.7381/2013 on the file of the learned Motor Accidents Claims Tribunal (Special Sub Court No.2, Motor Accident Claims Petitions), Small Causes Court, Chennai.

For Appellants .. Mr.N.Manoharan

For Respondents .. Ms.Karthikaa Ashok for R2

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 19.01.2018 made in MACT O.P.No.7381/2013 on the file of the learned Motor Accidents Claims Tribunal (Special Sub Court No.2, Motor Accident Claims Petitions), Small Causes Court, Chennai.

2. The claimant is the appellant herein.

3. The case of the claimant before the trial Court is as follows:



In an accident that had occurred on 22.07.20112, at about 7.10 hrs., when the appellant was riding his TVS Max 4 R motor cycle bearing Registration No.TN03F0426 a vehicle bearing Registration No. NLIIAJCB Loader of M/s.Escort JCB Ltd. Chassis No.34372 & Engine No.180060110 from North to south came in a rash and negligent manner and dashed against the appellant. As a result of which, the appellant sustained grievous injuries. Since the accident occurred due to the rash and negligent driving of the driver of the loader of JCB Vehicle, the owners of the vehicle, loader of M/s.Escort JCB Ltd., are jointly, severally and vicariously liable to pay compensation to the appellant/claimant together with interest. The claimant filed the claim petition and claimed compensation of Rs.20,00,000/- for the injuries sustained by him.

4.Before the Tribunal, the 1st and 2nd respondents denied the manner in which the accident occurred and denied the allegations made in the claim petition. The nature of injuries sustained by the claimant has to be proved by him with valid material evidence and hence, it is the case of the respondents that the respondents are not liable to pay any compensation and prayed for dismissal of the claim petition. Since the vehicle is insured with the Insurance company, the claim against the respondents is not maintainable.

5.Before the Tribunal, on the side of the claimant, four witnesses were examined as P.W.1 to P.W.4 and marked Ex.P1 to Ex.P18. On the side of the respondents, no oral and documentary evidence were adduced.

6.The Tribunal, on considering the pleadings, oral and documentary evidence held that, the accident occurred due to the rash and negligent driving of the driver of the JCB Vehicle belonging to the Corporation of Chennai and awarded a sum of Rs.2,76,000/- as compensation to the claimant with interest at 7.5% from the date of petition till the date of realisation. Not being satisfied with the compensation awarded by the Tribunal, the claimant is before this Court by way of this Appeal.

7.Heard the learned counsel for the parties and perused the material documents available on record.

8.It is the case of Appellant/Claimant that, the Tribunal erred in fixing the monthly income of the deceased at Rs.6,500/-, when he was actually earning a sum of Rs.20,000/- per month as Sales Executive and that, the Tribunal ought to have fixed disability at 55% and has erroneously fixed 30% and



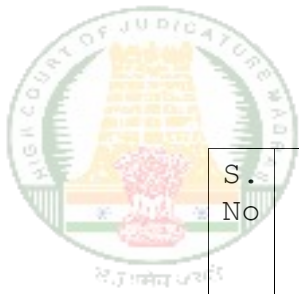
granted a compensation of Rs.90,000/-, which is less, when compared to the injuries sustained by him. The Tribunal ought to have considered the compensation under the head for loss of income for nine months instead of six months.

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9. It is seen that, the Tribunal has fixed only a sum of Rs.6,500/- as the monthly income of the appellant. Though the claimant was inpatient for quite some time, the Tribunal has fixed the loss of income only for six months, which is found to be inappropriate and hence, fixing the loss of income for a period of nine months would meet the ends of justice. Accordingly, loss of income is arrived at Rs.58,500/- (Rs.6,500/- * 9 = Rs.58,500/-). Considering the injuries sustained by the appellant/claimant and the injuries on the vital parts of the body, namely, tibial plateau fracture right and abrasion and grievous injuries all over the body, the disability is assessed at 40% and accordingly, towards the head of disability, the compensation would be Rs.1,20,000/- (3,000*40% = Rs.1,20,000/-). The amount awarded by the Tribunal for transportation to the hospital is enhanced from Rs.5,000/- to Rs.10,000/-. The amount awarded by the Tribunal for pain and sufferings, damage to clothes, extra nourishment and medical expenses are just and proper compensation and do not require any further interference by this Court and accordingly, the compensation awarded towards these heads remain unaltered.

12. In fine, the quantum of compensation awarded by the Tribunal is enhanced to a sum of Rs.3,30,500/-. Details of the same are tabulated below:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount modified by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Disability	90,000/- (3,000*30%)	1,20,000.00 (3,000* 40%)	Enhanced
2.	Pain and sufferings	30,000.00	30,000.00	Unaltered
3.	Loss of income	39,000.00	58500.00 (6,500 * 9)	Enhanced
4.	Transportation	5,000.00	10,000.00	Enhanced
5	Extra Nourishment	30,000.00	30,000.00	Unaltered



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount modified by this Court (Rs.)	Award confirmed or enhanced or granted
6	Damage to Clothes	3,000.00	3,000.00	Unaltered
7	Medical Expenses	79,000.00	79,000.00	Unaltered
	Total	2,76,000.00	3,30,500.00	Enhanced

10. In the result, the compensation of a sum of Rs.2,76,000/- awarded by the Tribunal is hereby enhanced to a sum of Rs.3,30,500/- (Rupees three Lakhs thirty Thousand five Hundred only), together with interest at the rate of 7.5% per annum from the date of filing the Claim Petition till the date of deposit. The 2nd respondent is directed to deposit the Award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.7381 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2, Motor Accident Claims Petitions), Small Causes Court, Chennai. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellant/Claimant through RTGS, within a period of two weeks.

11. Appellant/Claimant shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that, if there is any delay in filing the above Appeal and in case, any order is passed by this Court earlier depriving interest for the period of delay in question, interest for the period of delay shall be excluded.

12. In fine, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RR



To

1.The Motor Accidents Claims Tribunal
(Special Sub Court No.2,
Motor Accident Claims Petitions),
Small Causes Court, Chennai.

2.The Assistant Executive Engineer (MV)
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61 Basin Bridge Road
Chennai 600 021.

3.The Commissioner,
Corporation of Chennai
Ripon Building
Poonamalee High Road
Chennai 600 003.

4. The Section Officer
V.R. Section, High Court, Madras.

+1 CC to Mr.N.Manoharan, Advocate sr 62707

+1 CC to Ms.Karthikaa Ashok, Advocate sr 67359.

C.M.A.No.1245 / 2018

RSV(CO)
SP(04/01/2022)