



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.901 of 2018

A.Muthusamy

..Appellant/Petitioner

Vs

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
No.12, Ramakrishna Road,
Salem-636 007.

..Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2014 made in M.C.O.P.No.1172 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub-Court No.1, Salem.

For Appellant : Mr.R.M.Marudhachalmurthy
For Respondent : Mr.D.Venkatachalam

JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.04.2014 made in M.C.O.P.No.1172 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub-Court No.1, Salem.

2.The appellant is claimant in M.C.O.P.No.1172 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub-Court No.1, Salem. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.07.2011. 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.1,03,000/- as compensation to the appellant/claimant. Not being satisfied with the amount awarded



by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant/claimant contended that the appellant was working as Office Assistant in Labour Department and was earning a sum of Rs.18,471/- per month and he was also doing real estate business in which he was getting Rs.2,00,000/- per annum as commission. He would contend that the appellant sustained fracture on the left tibia and another fracture on the left scapula and proved the same by examining P.W.2-Doctor S.Rajamanickam, who assessed that appellant suffered 40% disability. The respondents have not let in any contra evidence. In the absence of contra evidence, the Tribunal erroneously reduced the percentage of disability from 40% to 25% and awarded meagre amount of Rs.50,000/- for disability. The accident is of the year 2011. The Tribunal has not awarded any amount towards loss of income and attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the appellant has not proved that he suffered functional disability and hence the Tribunal has rightly applied percentage method and awarded a sum of Rs.50,000/- towards 25% disability. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5. 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.

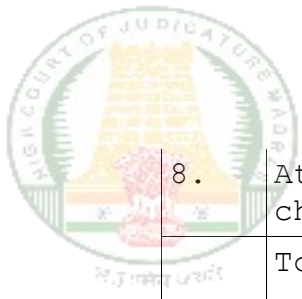
6. From the materials available on record, it is seen that according to the appellant, he was aged 55 years and was working as Office Assistant in Labour Department and was earning a sum of Rs.18,471/- per month and he was also doing real estate business in which he was getting Rs.2,00,000/- per annum as commission. He produced Ex.P9, leave certificate to show that he had availed medical leave. He would also filed Ex.P8-pay certificate, which shows his gross salary is Rs.16,598/-. The appellant admits that he is still continuing his job. Aslo, he would fairly admit that as he had availed medical leave, there is no loss of income. Hence, the Tribunal has not awarded any amount towards loss of income. However, considering the fact that the accident is of the year 2011 and a sum of Rs.15,000/-



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is fixed as monthly income of the appellant and due to the injury, the appellant would not have certainly attended his work in respect of real estate business atleast for a period of three months. Therefore, the appellant is entitled to a sum of Rs.45,000/- (Rs.15,000/- X 3) towards loss of income for three months. The appellant examined Dr.S.Rajamanickam as P.W.2, who assessed the disability of the appellant at 40% and Ex.X1/disability certificate was marked to prove the same. The Tribunal reduced the same to 25% holding that the percentage of disability assessed by the doctor is slightly on the higher side and awarded Rs.50,000/- by taking Rs.2,000/- per percentage of disability which is not correct. Considering the year of accident, this Court awards a sum of Rs.75,000/- (Rs.3,000/- X 25%) towards permanent disability by taking Rs.3,000/- per percentage of disability. According to the appellant, he has taken treatment in the hospital as in-patient for about 7 days. The Tribunal has not awarded any amount towards attendant charges. This Court awards a sum of Rs.2,000/- towards attendant charges. The amount awarded by the Tribunal towards pain and sufferings and food and extra nourishment are meagre and the same is hereby enhanced to Rs.30,000/- and Rs.10,000/-. The amounts awarded by the Tribunal under all the 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
1.	Medical expenses	26,000/-	26,000/-	Confirmed
2.	Pain & sufferings	20,000/-	30,000/-	Enhanced
3.	Food & extra nourishment	5,000/-	10,000/-	Enhanced
4.	Disability	50,000/-	75,000/-	Enhanced
5.	Transportation	1,000/-	1,000/-	Confirmed
6.	Loss towards personal belongings	1,000/-	1,000/-	Confirmed
7.	Loss of income	-	45,000/-	Granted



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8.	Attendant charges	-	2,000/-	Granted
	Total	Rs.1,03,000/-	Rs.1,90,000/-	Enhanced by Rs.87,000/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,03,000/- is hereby enhanced to Rs.1,90,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant shall 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. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

gbi
To

1.The Motor Accident Claims Tribunal, Salem.
The Judge,
Special Sub-Court No.1,
Salem.

Copy to
The Section Officer
V.R.Section, High Court, Chennai.

+1 CC to Mr.R.M.Marudhachalmurthy, Advocate sr 64224
+1 CC to Mr.D.Venkatachalam, Advocate sr 64218.

C.M.A.No.901 of 2018

CP(CO)
SP(07/01/2022)