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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.06.2021	DELIVERED ON: 23.07.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.NO.3391 OF 2019

B.Amjad

.. Appellant/
Petitioner

.Vs.

The Managing Director,
Tamilnadu State Transport Corporation Limited,
Villupuram Division, Rangapuram,
Vellore - 9.

.. Respondent/
Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.12.2017 made in M.C.O.P.No.672 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.R.Nalliyappan
For Respondent : Mr.C.S.K.Sathish

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 15.12.2017 made in M.C.O.P.No.672 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The appellant is the claimant in M.C.O.P.No.672 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. He filed the above said claim petition claiming a sum of Rs.14,00,000/- as compensation



for the injuries sustained by him in the accident that took place on 23.10.2012.

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 respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.4,67,000/- 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 contended that in the accident the appellant suffered radius fracture with supra condylar fracture, right femur fracture and also sustained injuries at both arms and both legs and also in head. The Medical Board examined the appellant and assessed 70% disability for arms and legs and 35% disability for faciomaxillary disability. Therefore, the Tribunal ought to have fixed the disability of the appellant at 100% and awarded compensation for 100% disability. But, the Tribunal has taken only 78% disability and awarded compensation only for 78% disability and the same is not correct. At the time of accident, the appellant was aged 43 years, working as Coolie and was earning a sum of Rs.15,000/- per month. Due to the injuries and disability suffered by the appellant in the accident, he could not do the work as he was doing earlier and also he could not able to discharge his daily life and hence, the Tribunal ought to have adopted multiplier method and awarded compensation for disability. The amounts awarded by the Tribunal towards pain and sufferings, loss of income, transportation, attendant charges, future medical expenses and extra nourishment are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal following the judgment of Madurai Bench of this Court reported in 2007 (2) TNMAC 249, [Selvaraj Vs. S.Ramesh and another], fixed the percentage of disability of the appellant at 78% and awarded a sum of Rs.2,34,000/- for 78% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The appellant has not proved that he suffered any functional disability or he lost his entire earning capacity and hence, he is not entitled to any compensation towards loss of earning capacity by adopting multiplier method. The Tribunal considering the entire materials on record, has awarded a sum of Rs.4,67,000/- as compensation for the appellant, which is not meagre. In view of the same, the appellant is not entitled to any enhancement 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 the entire materials on record.

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8. From the materials available on record, it is seen that in the accident the appellant suffered radius fracture with supra condylar fracture, right femur with fracture and also sustained injuries at both arms and both legs and also in head. The Medical Board examined the appellant and assessed 70% disability for arms and legs and 35% disability for faciomaxillary disability and issued Ex.P6/disability certificate to that effect. The Tribunal accepted Ex.P6/disability certificate issued by the Medical Board and following the judgment of Madurai Bench of this Court reported in 2007 (2) TNMAC 249, [Selvaraj Vs. S.Ramesh and another], fixed the percentage of disability of the appellant at 78% and awarded a sum of Rs.2,34,000/- (Rs.3,000/- X 78% disability) for 78% disability at the rate of Rs.3,000/- per percentage of disability and the same is not correct. At the time of accident, the appellant was aged 43 years, working as Coolie and was earning a sum of Rs.15,000/- per month. From Ex.P6/disability certificate, it is seen that the Medical Board has stated that the appellant sustained scar on the right leg, ROM right knee 0-90, left knee 0-120, further painful - left wrist lateral deviation and he is not able to squat. Considering the nature of work done by the appellant, nature of injuries and disability suffered by him, this Court is of the considered view that it will be just and reasonable to award compensation to the appellant by adopting multiplier method for loss of earning capacity. Thus, by converting the percentage of disability of the appellant to whole body, the loss of earning capacity of the appellant is fixed at 26%. The appellant was aged 43 years at the time of accident and the multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another] is '14'. The appellant has not produced any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal considering the year of accident, age and nature of work done by the appellant, fixed a sum of Rs.6,000/- per month as notional income of the appellant. The accident is of the year 2012 and the cost of living has increased enormously. Considering the age and nature of work done by the appellant, a sum of Rs.7,500/- per month is fixed as notional income of the appellant. Thus, by fixing a sum of Rs.7,500/- as monthly income and applying multiplier '14', the appellant is entitled to a sum of Rs.3,27,600/- (Rs.7,500/- X 12 X 14 X 26/100) as compensation for disability. The appellant has taken treatment in the Government Vellore Medical College and Hospital, Vellore as inpatient for 17 days from 23.10.2012 to 08.11.2012. Considering the nature of



injuries and period of treatment taken by the appellant, this Court is of the considered view that the amounts awarded by the Tribunal under 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
1.	Disability	2,34,000/-	3,27,600/-	Enhanced
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Medical expenses	20,000/-	20,000/-	Confirmed
4.	Extra nourishment	20,000/-	20,000/-	Confirmed
5.	Attendant charges	10,000/-	10,000/-	Confirmed
6.	Transportation	20,000/-	20,000/-	Confirmed
7.	Loss of amenities	50,000/-	50,000/-	Confirmed
8.	Loss of income	36,000/-	36,000/-	Confirmed
9.	Damages to clothes	2,000/-	2,000/-	Confirmed
10.	Future medical expenses	25,000/-	25,000/-	Confirmed
	Total	Rs.4,67,000/-	Rs.5,60,600/-	Enhanced by Rs.93,600/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,67,000/- is hereby enhanced to Rs.5,60,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation 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 twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.672 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled to any interest for the default period as per the order



of this Court dated 06.09.2019 made in C.M.P.No.15623 of 2019 in C.M.A.No.SR.92059 of 2019. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

1. The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Vellore.
2. The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.3391 of 2019

PA (CO)
PM/25/11/2021