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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1995 of 2020

Vikram

... Appellant/Petitioner

Vs

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Kancheepuram Division - 3
Villupuram.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2019 made in M.C.O.P.No.3697 of 2012 on the file of Motor Accident Claims Tribunal, Principal Special Court, (Special Court under E.C. and N.D.P.S. Act) Chennai.

For Appellant : Mr.U.Chithambaram
for Mr.V.Mohan Choudary

For Respondent : Mr.K.J.Sivakumar

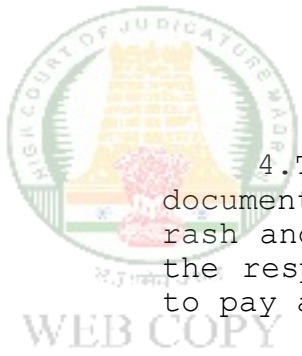
J U D G M E N T

This matter is heard through "Video Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 19.12.2019 made in M.C.O.P.No.3697 of 2012 on the file of Motor Accident Claims Tribunal, Principal Special Court, (Special Court under E.C. and N.D.P.S. Act) Chennai.

2. By consent of both the learned counsel appearing for the appellant and the respondent/Transport Corporation, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is the claimant in M.C.O.P.No.3697 of 2012 on the file of Motor Accident Claims Tribunal, Principal Special Court, (Special Court under E.C. and N.D.P.S. Act) Chennai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.12.2009.



4.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 the respondent and directed the respondent/Transport Corporation to pay a sum of Rs.1,76,174/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that in the accident, the appellant suffered comminuted fracture of scapula, anterior wedge compression fracture of D3 and multiple injuries all over the body. P.W.2/Doctor after examining the appellant, certified that the appellant suffered 45% partial and permanent disability. The Tribunal without any reason, reduced the disability to 30% and awarded a meagre sum of Rs.90,000/- towards disability. The appellant was an M.Sc. student in SRM University. Due to the injuries, he could not do his day-to-day activities. The Tribunal ought to have fixed a sum of Rs.10,000/- per month as notional income of the appellant and awarded compensation towards loss of earning power. The Tribunal has not awarded any compensation towards transportation, future medical expenses and extra nourishment. The amounts awarded by the Tribunal towards pain and suffering, attendant charges and loss of amenities are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal considering the materials placed before it, awarded compensation, which are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.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.

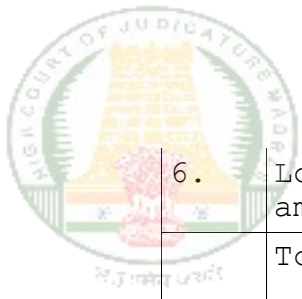
9.From the materials on record, it is seen that it is the contention of the appellant that in the accident, he suffered comminuted fracture of scapula, anterior wedge compression fracture of D3 and multiple injuries all over the body. Due to the injuries, the appellant could not bend his body, lift weight and finds difficulty to do the day-to-day activities. P.W.2/Doctor examined the appellant and certified that the appellant suffered 45% partial and permanent disability. The Tribunal reduced the disability to 30% on the ground that P.W.2/Doctor has not assessed the disability for whole body and



granted compensation by adopting percentage method. The same is correct. The reason given by the Tribunal for reducing the disability is not correct. The respondent did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and the disability certificate issued by him. Hence, the appellant is entitled to compensation for 45% disability. P.W.2/Doctor has not deposed that due to the injuries, the appellant lost his earning power. Hence, the appellant is not entitled to any compensation for loss of earning power. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,35,000/- (Rs.3,000/- X 45%).

9(i) According to the appellant, he has taken treatment as in-patient in Hande Hospital, from 18.12.2009 to 05.01.2020 and marked the discharge summary as Ex.P2 to prove the same. The Tribunal awarded a sum of Rs.3,000/- altogether towards transportation, attendant charges and other miscellaneous expenses, which is meagre. Considering the nature of injuries, disability and period of treatment taken by the appellant, Rs.5,000/-, Rs.7,500/- and Rs.7,500/- are awarded towards transportation, attendant charges and extra nourishment respectively. The appellant has not produced any document to prove that he is still taking treatment and therefore, he is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under all 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 or reduced
1.	Disability	90,000	1,35,000	Enhanced
2.	Medical expenses	63,174	63,174	Confirmed
3.	Transportation, attendant charges and other miscellaneous expenses	3,000	5,000 7,500	Enhanced
4.	Extra nourishment	-	7,500	Granted
5.	Pain and suffering	10,000	10,000	Confirmed



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6.	Loss of amenities	10,000	10,000	Confirmed
	Total	1,76,174	2,38,174	Enhanced by Rs.62,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,76,174/- is hereby enhanced to Rs.2,38,174/- 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. 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. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Special Judge,
Motor Accident Claims Tribunal,
(Special Court under E.C. and N.D.P.S. Act) Chennai.

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

+2cc to Mr.V.Mohan Choudry, Advocate Sr.1661, 1284
+1cc to M/s.K.J.Sivakumar, Advocate Sr.1339

C.M.A.No.1995 of 2020

ak[co]
srg 25/08/2021