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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.2369 of 2018

Vignesh (minor) .. Appellant/Petitioner
(Represented by his mother and
next friend Malar)

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd.,
Kanchipuram Region. .. Respondent/Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.12.2014 made in M.C.O.P.No.2041 of 2006 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : M/s.A.Subadra

For Respondent : Mr.K.J.Siva Kumar

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 10.12.2014 made in M.C.O.P.No.2041 of 2006 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.2041 of 2006 on the file of Motor Accident Claims Tribunal, II Court of Small



Causes, Chennai. He filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.03.2005. 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 Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.1,75,000/- as compensation to the appellant. 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 would submit that the Tribunal has awarded very meagre compensation without considering the medical evidence adduced on behalf of the appellant/claimant which would clearly established the fact that the appellant/claimant had sustained multiple injuries viz., fracture of right temporal fissure along with fracture of right temporal multiple punctuate hemorrhage and contusion, ventricle, fracture of shaft of femur M/3, ORIF was done, Ak slab was applied in the right lower limb, Hip spica was done and plate removal was done under general anesthesia. He would further submit that the Doctor assessed the disability of the injured as 75%. However, the Tribunal has reduced the same to 50% without considering the nature of injuries and awarded meagre sum of Rs.1,00,000/- under the head of permanent disability by fixing Rs.2,000/- per percentage. He would also submit that as regards the compensation awarded under other heads, the Tribunal has awarded very meagre and the same are liable to be enhanced. With these submissions, the learned counsel for the appellant sought for enhancement of the compensation amount.

4.On the other hand, the learned counsel for the respondent/Insurance Company would submit that the appellant/claimant is a minor and on consideration of entire materials available on record both the oral and documentary, the Tribunal has rightly assessed the disability at 50% and rightly awarded the compensation under the head of permanent disability at Rs.1,00,000/- and therefore no interference is required. He would also submit that the compensation awarded under other heads are also very reasonable and do not require any interference. Hence, the learned counsel sought for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as respondent/Transport Corporation and perused the materials available on record.



6. There is no dispute as regards the manner of accident and sustaining injuries by the appellant/claimant. The only aspect to be considered in this appeal is whether the Tribunal has appropriately awarded the compensation under the head of permanent disability towards the injuries sustained by the appellant/claimant. A perusal of the disability certificate Ex.P2, it would reveal that the Doctor who examined the appellant has assessed his disability at 75% as partial permanent. A perusal of the award of the Tribunal it appears that the Tribunal on consideration of the evidence of P.W.2 and Ex.P12-disability certificate, the Tribunal taking note of the nature of injuries sustained by the appellant was of the view that the assessment of disability made by P.W.2 appears to be on the higher side and reduced the same to 50% which in the opinion of this Court is on the lower side and the same is fixed at 60% considering the nature of injuries sustained by the appellant. However, it is pertinent to note that the Tribunal has awarded the compensation under the head of partial permanent disability at Rs.1,00,000/- which in the opinion of this Court is very low and it has to be enhanced. In this regard, it is worthwhile to refer a decision of the Hon'ble Supreme Court in the case of Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and Another, reported in 2013 SAR (Civil) 1088, wherein the Hon'ble Apex Court has held in Paragraph 12 as under:

<https://hcservices.ecourts.gov.in/hcservices/>



7.Keeping in view, the dictum of the Apex Court, in the Master Mallikarjun (cited supra), since the appellant/claimant sustained 60% disability. This Court is inclined to modify the compensation awarded under the head of permanent disability and accordingly enhanced the same at Rs.4,00,000/-. As regards the compensation awarded under other heads, this Court finds no infirmity and the same are confirmed. Accordingly, 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.	Transport to Hospital	7,000/-	7,000/-	Confirmed
2.	Extra nourishment	7,000/-	7,000/-	Confirmed
3.	Damage to clothes	1,000/-	1,000/-	Confirmed
4.	Medical expenses	35,000/-	35,000/-	Confirmed
5.	Loss of amenities of life	10,000/-	10,000/-	Confirmed
6.	Pain & sufferings	15,000/-	15,000/-	Confirmed
7.	Disability	1,00,000/-	4,00,000/-	Enhanced
	Total	Rs.1,75,000/-	Rs.4,75,000/-	Enhanced by Rs.3,00,000/-

8.The point for consideration is answered and in the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,75,000/- is hereby enhanced to Rs.4,75,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-claimant is directed to 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 six weeks from the date of receipt of a copy of this judgment. The appellant, being a minor, the award amount is directed to be



deposited in any of the Nationalized Bank, till the minor appellant attains majority. The mother of the minor appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

gbi

To

1.The Judge,
Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

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

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.67564

+1cc to Mr.V.Velu, Advocate SR.No.66945

C.M.A.No.2369 of 2018

GP(CO)
CB(28/02/2022)