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C.M.A.No.777 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.777 of 2023

Anjanelu @ Pujari Anjaneyulu

... Appellant

Versus

The Managing Director,
Metropolitan Transport Corporation,
Pallavan House, Chennai.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 27.02.2019 passed in M.A.C.T.O.P.No.4370 of 2015, on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai.

For Appellant : Mr.K.Ayyadurai

For Respondent : Mr.M.Murali Vinoth

JUDGMENT

The claimant had preferred the instant appeal seeking enhancement



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of compensation.

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2.The claimant/appellant had filed the claim petition stating that on 02.05.2015 at about 22.00 hrs., while he was walking on a public road, a bus belonging to the respondent Corporation came in a rash and negligent manner, dashed against the appellant; that as a result of which, he sustained grievous injuries and thus, the appellant was entitled for compensation.

3.The respondent filed a counter stating that the accident took place only due to the negligence of the appellant as he attempted to board into the running bus; that as a result of which, he fell down and sustained injuries and hence, the respondent is not liable to pay any compensation; that in any case, the compensation claimed by the appellant was excessive and prayed for dismissal of the claim petition.

4.Before the Tribunal, the appellant examined P.W.1 and P.W.2 and marked Ex.P1 to P9. The respondent examined R.W.1-driver of the bus and did not mark any document.



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6.The learned counsel for the appellant submitted that the Tribunal fixed the disability at 35% and awarded a sum of Rs.3000/- per percentage of disability; that in view of the decision of the Hon'ble Division Bench of this Court in the case of ***Dr.Prafulla vs. Bajaj Allianz General Insurance Co. Ltd.***, made in ***C.M.A.No.2446 of 2021***, a sum of Rs.5000/- has to be awarded per percentage of disability; that the compensation awarded by the Tribunal under other heads requires enhancement and prayed for allowing of the appeal.

7.The learned counsel for the respondent per contra submitted that the appellant had not subjected himself to examination by the Medical Board and hence, the compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.



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8.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

9.On perusal of records, it is seen that the appellant sustained the following injuries:

“Fracture in right foot; Fracture in right knee; Medical Malleolus; Deep skin loss; Deep Abrasion and Multiple Injuries throughout his body.”

The Doctor had assessed the disability at 40%. However, the Tribunal had fixed the disability at 35%. The appellant had not established any functional disability and hence, the compensation awarded by the Tribunal by adopting percentage method is justified. Further, the appellant would be entitled to Rs.5000/- per percentage of disability as per the decision of the Hon'ble Division Bench of this Court in the case of ***Dr.Prafulla vs. Bajaj Allianz General Insurance Co. Ltd.***, made in ***C.M.A.No.2446 of 2021***. Thus, the compensation under the head disability has to be as follows:



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Rs.5000 X 35 = Rs.1,75,000/-

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10.Considering the nature of injuries, this Court is of the view that the award under the head loss of amenities can be enhanced to Rs.25,000/-. Similarly the compensation under the head transportation can be enhanced to Rs.15,000/-. The Tribunal had not awarded any compensation under the head attender charges and future medical expenses. A sum of Rs.5000/- is awarded under the head attender charges considering the period of treatment. Considering the fact that surgery was conducted for fracture, this Court is of the view that the appellant would be entitled to Rs.10,000/- towards future medical expenses. The Tribunal had awarded a sum of Rs.25,000/- towards loss of earning during treatment period. The appellant was working as a coolie. Hence, this Court is of the view that the loss of income can be assessed for three months. It would be just and reasonable to fix the notional income as Rs.10,000/-. Hence, the compensation under the head loss of income is enhanced to Rs.30,000/-. The amount awarded by the Tribunal under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earning	25,000	30,000	Enhanced
2.	Transport to Hospital	6,000	15,000	Enhanced
3.	Extra Nourishment	5,000	5,000	Confirmed
4.	Damages to clothing and articles	3,000	3,000	Confirmed
5.	Medical bills	12,000	12,000	Confirmed
6.	Loss of Amenities	10,000	25,000	Enhanced
7.	Pain and Suffering	25,000	25,000	Confirmed
8.	Permanent disability	1,05,000	1,75,000	Enhanced
9.	Future medical expenses	-	10,000	Granted
10.	Attender charges	-	5000	Granted
	Total	1,91,000	3,05,000	Enhanced by Rs.1,14,000/-

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,91,000- is hereby enhanced to Rs.3,05,000/-, together with interest at



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7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 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 six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. However, the appellant is not entitled to interest for a period of 1323 days, as per the order of this Court dated 20.03.2023 in C.M.P.No.4808 of 2023 in C.M.A.Sr.No.19568 of 2023. The appellant is directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

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rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The Principal Special Judge,
The Motor Vehicle Accident Tribunal,
Special Court under E.C. & NDPS Act, Chennai.



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2. The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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