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CMA No. 1436 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1436 of 2023

Vignesh

... Appellant

Versus

The Managing Director,
Metropolitan Transport Corporation (Ltd.),
Pallavan House, Chennai – 600 002.
Respondent

...

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 19.11.2018 M.A.C.T.O.P. No. 6446 of 2014 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, (Motor Accident Claims Tribunal as per G.O.(M.S.)No.716, Home (tr.IV) Dept.dt 07-06-2016), Chennai.

For Appellant : Mr. K. Ayyadurai.

For Respondents : Mr. M. Murali Vinodh.

J U D G M E N T

The petitioner has preferred the above appeal praying for enhancement of compensation awarded by the Tribunal in M.C.O.P.



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No.6446 of 2014 dated 19.11.2018.

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2.The petitioner who was a minor at the time of accident filed a claim petition through his next friend and guardian stating that on 08.09.2014 at about 17.20 hours, the driver of the bus belonging to the respondent drove the bus bearing Registration No. TN-01-N-4341 in a rash and negligent manner as a result of which the petitioner thrown out of the bus and suffered injuries and that he was entitled to compensation.

3.The respondent filed a counter stating that for the alleged accident that took place on 08.09.2014, the complaint was filed on 11.09.2014 and the accident itself cannot be believed. The respondent further submitted that in any case the compensation claimed is excessive.

4.The petitioner examined two witnesses on his side and marked Ex.P.1 to Ex.P.7. The respondent examined one witness on his side and marked Ex.R.1.

5.The learned counsel for the appellant submitted that the compensation awarded by the Tribunal under most of the heads is



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meagre. Admittedly, the appellant suffered 40% disability as per the disability certificate which has been marked as Ex.P.7 and the evidence of the doctor, PW2. Under such circumstances, the Tribunal on its own reduced the percentage of disability to 25% without any basis. Further, the Tribunal fixed Rs.3000/- per percentage of disability for the accident which took place in the year 2014. This Court in ***M.Chinnathambi Vs. S.Deepa and another*** reported in ***2020 (1) TN MAC 617*** had held that Rs.4000/- can be fixed per percentage of disability for the accident in the year 2014. The learned counsel further submitted that the compensation under the head pain and sufferings is meagre. The Tribunal had not considered the loss of amenities and the Tribunal has also awarded a meagre compensation of Rs.3000/- towards transport to hospital and extra nourishment. The Tribunal had not awarded compensation under the head Attendant charges as the petitioner was then a minor and required a attendant.

6.The learned counsel for the respondent per contra submitted that the award of the Tribunal cannot be faulted with and the Tribunal had rightly awarded a just compensation.



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7.This Court on perusal of the award passed by the Tribunal finds that the Tribunal had taken into consideration the evidence of PW1 and other documents and held that the accident had taken place due to the rash and negligent driving of the driver of the bus belonging to the respondent. The respondent had not challenged the said finding. The question is whether the Tribunal had awarded just compensation. This Court finds that the disability certificate issued by PW2 shows that the disability was 40%. However the Tribunal reduced the disability to 25% in the absence of any evidence to the contrary. The said approach is without any basis. This Court therefore accepts the evidence of PW2 and disability certificate issued by him which has not been refuted by the respondent. Further, this Court finds that for the accident of the year 2014, this Court fixed Rs.4000/- per percentage of disability in **Chinna Thambi's case** (cited supra) and the same can be adopted. The compensation awarded under the head permanent disability is enhanced from Rs.75,000/- to Rs.1,60,000/-. (Rs.4,000/- X 40%). Further this Court finds that the compensation awarded under the head transport to hospital and extra nourishment is meagre and the same are enhanced to Rs.5,000/- each. The appellant was admittedly a minor at the time of accident. Hence, he was entitled to attendant charges of Rs.5000/-.



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Considering the nature of injuries, period of hospitalization and the age of the appellant, this Court is of the view that compensation under the head pain and sufferings can be enhanced to Rs.30,000/-. Further, the appellant has suffered a fracture in the leg and considering his age, he is entitled to loss of amenities of Rs.20,000/- which was not awarded by the Tribunal. The amount of Rs.1000/- awarded under the head damage to clothing and articles is 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.	Transport to Hospital	3000	5000	Enhanced
2.	Extra nourishment	3000	5000	Enhanced
3.	Damages to clothing and articles	1000	1000	Confirmed
4.	Pain and sufferings	20,000	30,000	Enhanced
5.	Permanent Disability	75,000	1,60,000	Enhanced
6.	Attendant Charges	---	5000	Granted
7.	Loss of Amenities	---	20,000	Granted
	Total	1,02,000	2,26,000	Enhanced by



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Rs.1,24,000/-

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8. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,02,000/- is hereby enhanced to Rs.2,26,000/- together with interest at 7.5% per annum, excluding the default period of 1350 days from the date of petition till the date of deposit. The respondent 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 (6) weeks from the date of a receipt of copy of this Judgment. On such deposit the appellant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee if any on the enhanced award amount. No costs.

12.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To



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The Principal Special Judge,
Special Court under E.C. & NDPS Act,
(Motor Accident Claims Tribunal
as per G.O.(M.S.)No.716, Home (tr.IV)
Dept.dt 07-06-2016),
Chennai.



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SUNDER MOHAN, J

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