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CMA.No.1658 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1658 of 2018

G. Thangamani

.. Appellant

Vs.

Metropolitan Transport Corporation Ltd.,
Rep by its Managing Director,
Pallavan Salai, Chennai -2.

.. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 19.01.2016 made in M.C.O.P.No.385 of 2014 on the file of the Motor Accidents Claims Tribunal/III Judge, Small Causes Court, Chennai -104.

For Appellant : Mr.C.Richard Suresh Kumar

For Respondent : Mr.S.Sivakumar

J U D G M E N T

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 19.01.2016 passed by the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai.



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2. The case of the claimant / appellant is that on 30.12.2013 at about 09.00 hrs, while the appellant was travelling in the bus bearing Regn.No.TN-01-4132, Thiruverkadu to Ambattur Main Road from the West to East direction, near Ayappakam, the driver of the respondent bus drove the vehicle in a rash and negligent manner, suddenly applied brake and thereby the appellant was thrown out of the bus, due to which, the appellant has sustained grievous injuries. Claiming that the driver of the bus is solely responsible for the accident, the appellant / claimant has filed a claim petition claiming a sum of Rs.6,00,000/-

3. The Tribunal, based on the evidence of P.W.1 and perusing the exhibits in Ex.P1 to P13, has fastened the liability on the respondent, which has to be paid by the respondent/ Transport Corporation and ultimately quantified the total compensation at Rs.1,85,098/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.

4. The learned counsel for the claimant / appellant submitted that the appellant was a Fitter-Apprentice and was earning Rs.7,000/- per month. The doctor assessed the disability of the appellant as 50% whereas the



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Tribunal fixed 40% for disability and awarded only a sum of Rs.3000/- per percentage. He further submitted that PW2 deposed that the injured has sustained “ Head injury. Loss of consciousness , right ear bleed, Glasgo coma scale: E3V4M6, PERL, right facial Nerve L.MN.Palsy C.T.Scan Brain, Right Temporal bone fracture, Bi-frontal contusion, left Peri Sylvian SAH, Right Occipital Lobe contusion, post Traumatic headache, post traumatic vertigo, extra ocular movements jerky in nature similar to Nystagmus 10%, Antiepileptic Therapy, and Sensory Ataxia. He further submitted that the Tribunal has failed to fix the monthly income of the appellant at Rs.10,500/- by adding Rs.3500/- to the actual salary. It has failed to adopt the multiplier method for calculating compensation. It has ought to have awarded compensation of Rs.1,50,000/- taking into account 50% disability instead of awarding a meagre sum of Rs.1,20,000/-. The award granted by the Tribunal is grossly low, unjust and arbitrary and deserves to be enhanced. He further submitted that the Tribunal ought to award more compensation under the heads of pain and suffering', ' loss of earning', " Transport to Hospital", 'damage to clothing and article', 'medical bills', 'loss of mental agony', 'loss of nursing care and attender charges'. PW2/Doctor assessed the disability as 50% as seen from Ex.P13/disability certificate. It has not awarded any amount under the heads of partial loss of



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earning from 01.04.2014 to 30.06.2014', 'loss of amenities, 'loss of expectation of life' and 'compensation for the loss of earning power'. But the Tribunal arrived 40% as disability based on Ex.P3 to Ex.P7 and ExP12 and Ex.P13 and in any event, the Tribunal erred in awarding compensation at Rs.1,85,098/- as against the claim of Rs.6,00,000/-. Hence, he prays for enhancement of Award amount.

5. Before the Tribunal, the Appellant/claimant has examined two witnesses and marked PW1 and PW2 and filed thirteen documents which were marked as Ex.P1 to Ex.P13. On the side of the respondent/Insurance Company, one witness was examined as RW1. But no document has been marked.

6. Per contra, the learned counsel for the respondent / Transport Corporation has submitted that the amount of compensation claimed in any event, is highly speculative, excessive, inflated and baseless. Though the driver alerted to avoid the accident, the appellant could not hold the handle bar properly and hence he fallen down and sustained injuries. Hence the said accident occurred only on the negligent act of the appellant only. Hence, the respondent is not liable to pay any compensation to the



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appellant. The Tribunal has taken into consideration each and every aspect and has awarded just compensation, which does not require any interference at the hands of this Court. Hence, he prays for dismissal of the appeal.

7. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

8. Based on the evidences of P.W.1 and P.W.2 and perusing the exhibits in Ex.P1, the Tribunal has fastened the liability on the Driver of the bus, which has to be compensated by the respondent herein.

9. Considering the nature of the injuries sustained by the Appellant/claimant, this Court is inclined to fix the disability of the Appellant/claimant at 50%. Hence, under the head of disability, the amount to be awarded to the appellant/claimant would be Rs.1,50,000/- (Rs.3000x50%).

10. With regard to quantum, the Tribunal has awarded a sum of Rs.14,910/- towards loss of income, taking the monthly income of the



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deceased at Rs.6500/- per month. Considering the avocation of the claimant,

this court is inclined to fix Rs.7000/- towards his monthly income.

Similarly, considering the nature of injuries and the period of treatment as in-patient, this court is inclined to take six months for calculation of loss of income. Accordingly, the amount awarded towards loss of income is Rs.42000/. Further, on perusal of records, it is seen that the Tribunal has not granted compensation under the head of loss of amenities. Accordingly, a sum of Rs.10,000/- is awarded as compensation to the appellant under the said head. The amounts awarded under the heads of Transport, attender charges, damages to clothes, seems to be very low and thus they are enhanced to Rs.7000/-, Rs.4000/-, Rs.2500/- respectively.

11. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the other heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

12. In fine, the re-structured compensation, item-wise, would be thus:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Transport to Hospital	5000/-	7000/-
Extra Nourishment	10000/-	10000/-
Loss of income	14910	42,000/-
Attender Charges	2310/-	4000/-
Damages to clothes	1000/-	2500/-
Medical bills	1878/-	1878/-
Pain & suffering	20000	20000
Damages for mental and physical shock	10000	10000
Disability(50% x 3000)	120000	150000
Total	1,71,685/-	2,47,378/-

13. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **partly allowed**, by enhancing the total amount of compensation from Rs.1,71,685/- to Rs.2,47,378/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.



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(b) The respondent/Transport Corporation is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.C.O.P.No.385 of 2014 within a period of six weeks from the date of receipt of a copy of this Judgment. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.

(c) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter.
No costs.

07.03.2023

Index : Yes/No
Internet : Yes/No
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To

1. The Motor Accidents Claims Tribunal,
III Judge, Small Causes Court, Chennai -104.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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A.A.NAKKIRAN, J

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