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C.M.A. No.2044 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2044 of 2023

Kathamuthu

..

Appellant

Vs.

The Managing Director,
Tamilnadu State Transport Corporation Limited
Villupuram Limited
No.3/137, Salamedu, Vazhureddy Post,
Villupuram .

..

Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.03.2018 made in M.A.C.T.O.P. No.1569 of 2018 Dt.19.02.2021 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellants : Ms.A.Subadra

For Respondent : M/s.S.S.Santhoshakoman



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 19.03.2018 made in M.A.C.T.O.P. No.1569 of 2017 on the file of the Motor Accident Claims Tribunal, the Special Sub Court, Tiruvannamalai.

2. By consent of the learned counsel appearing for the appellant as well as Mr.S.S.Santhosa Kumar, learned counsel who takes notice for the respondent, the appeal is taken up for final disposal at the admission stage itself.

3. The appellants had filed the above 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 24.02.2013.

4. The Tribunal, considering the oral and documentary evidence held



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that the accident occurred due to rash and negligent driving by driver of the bus belonging to the respondent and directed the respondent to pay a sum of Rs.2,68,100/- as compensation to the appellant. Aggrieved by the said award, the appellant has preferred the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant submitted that although the appellant had established that he was an agriculturists and he had suffered multiple fractures in the right hand, that the Tribunal had awarded compensation by adopting percentage method when the Medical Board had examined the appellant and assessed the disability as 40% partial permanent disability; that in view of the avocation and the medial evidence, the Tribunal ought to have adopted the multiplier method for awarding compensation towards functional disability and prayed for allowing the appeal.



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6. The learned counsel appearing for the respondent, per contra submitted that the appellant had not established his avocation and income. Therefore, the Tribunal was right in awarding compensation by adopting percentage method; that the Medical Board had assessed the disability only as partial permanent disability and there is no evidence adduced before the Tribunal to show that the appellant suffered functional disability and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the respondent and perused the materials available on record.

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

9. Admittedly, the appellant had suffered the following injuries as extracted in the award of the Tribunal -



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Proximal both bone fracture at Right Fore-arm with Bone

loss and loss of Joint Congruity with open elbow joint”.

The Tribunal had also observed that there was a huge scar and uneven shape in the right hand of the appellant, based on Ex.P7-photographs. The appellant was aged 52 years at the time of accident. Considering the fact that the appellant was an agriculturist, the injuries suffered by him as stated above and the disability certificate, Ex.C1 issued by the Medical Board, this Court is of the view that the appellant had suffered functional disability. Hence, it would be just and reasonable to fix the functional disability of the appellant as 20%. Thus, the appellant would be entitled to compensation under the head disability by adopting multiplier method. Taking into consideration the future prospects, the notional income is fixed as Rs.9000/- per month (including future prospects). Thus, the compensation towards disability is enhanced from Rs.1,20,000/- to Rs.2,37,600/- (Rs.9000 x 12 x 11 x 20%).



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The appellant has taken treatment as inpatient for a period of 12 days. The Tribunal has not awarded any amount towards attender charges and hence, a sum of Rs.10,000/- is awarded towards attender charges. The amounts awarded by the Tribunal under other heads is reasonable and hence the same are confirmed.

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,20,000/-	2,37,600/-	Enhanced
2.	Pain and Sufferings	70,000/-	70,000/-	Confirmed
3.	Medical expenses	33,100/-	33,100/-	Confirmed
4.	Loss of earning during treatment period	40,000/-	40,000/-	Confirmed
5.	Extra nourishment	5,000/-	5,000/-	Confirmed
6.	Attender charges	-	10,000/-	Granted
	Total	2,68,100/-	3,95,700/-	Enhanced by Rs.1,27,600/-

10. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,68,100/- is hereby enhanced to Rs.3,95,700/- 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 award amount along with 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.

01.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

rgr

To

1. The Special Sub Court,
Special Court under E.C. and NDPS Act,
Motor Accident Claim Tribunal,
Tiruvannamalai.

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

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Dated: 01.09.2023