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CMA.No. 1229 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 1229 of 2023

Jana

... Appellant

Versus

The Managing Director
The Metropolitan Transport Corporation Limited
Pallavan House, Anna Salai
Chennai - 600 002..

... Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, prays to set aside the Award and Decree dated 28.09.2021 passed in MCOP.No. 5971 of 2016 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr. Amar D. Pandiya
For Respondent : Mr.M. Murali Vinodh

JUDGMENT

The above appeal is filed by the claimant seeking enhancement of compensation.



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2. On 22.06.2016, while the claimant was travelling in the respondent Transport Corporation bus, due to the rash and negligent driving by the driver of the bus, the claimant was thrown off and fell from the bus on to the road. Due to the impact, the claimant sustained grievous injuries. The claimant was aged about 18 years at the time of accident and he was studying in Dr.Ambedkar Government Arts College, Vysarpadi. The claimant was doing part time job and earning a sum of Rs.15,000/- per month. The claimant therefore filed the claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident.

3. Before the Claims Tribunal, the claim petition was contested by the respondent/Transport Corporation which filed a detailed counter affidavit denying the negligence, liability and quantum of compensation.

4. Before the Claims Tribunal, the claimant examined himself as PW1 and one other witness was examined as PW2 and Ex.P1 to Ex.P9 were marked. On the side of the respondent/Transport Corporation, the



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driver of the respondent/Transport Corporation examined himself as RW1 and no document was marked by the respondent/transport corporation bus.

5. The Claims Tribunal, on an assessment of the entire evidence on record, rendered a finding of negligence against the driver of the respondent/Transport Corporation and assessed the compensation at Rs.2,91,450/- along with 7.5% interest. Aggrieved by the quantum of compensation awarded by the Claims Tribunal, the claimant has filed the above appeal for enhancement of compensation.

6. The learned counsel for the appellant submitted that considering the nature of injuries sustained by the claimant, the Claims Tribunal ought to have applied the multiplier method for assessing the compensation. The learned counsel further submitted that the award of the Tribunal under the heads viz., "attender charges", "transportation", and "extra nourishment" were on the lower side and the same deserved to be enhanced. The learned counsel further fairly submitted that if the multiplier method was adopted the claimant would not be entitled to compensation towards "loss of amenities", "loss of income" and "loss of



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education”. Therefore, the claimant prayed for enhancement of compensation.

7. The learned counsel for the respondent, on the other hand, submitted that the award of the Claims Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

8. I have heard both the learned counsel for the appellant and the learned counsel for the respondent/Transport Corporation and perused the materials available on record.

9. It is seen that the claimant sustained grievous injuries and traumatic amputation 1 to 4 toes. Under Ex.P8, the disability certificate issued to the claimant by the AIIMS and the Ministry of Social Justice the disability was assessed at 23% and the same was accepted by the Tribunal. The Tribunal found that the claimant sustained functional disability and fixed the same at 23%. Considering the nature of injuries sustained by the claimant I am of the view that the Tribunal was justified in assessing the functional disability at 23%. In the absence of any evidence in support of



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the income of the claimant, the Claims Tribunal in my view rightly assessed the notional income at Rs.8,000/-. Once the tribunal found there was functional disability at 23% the tribunal ought to have adopted the multiplier method. Considering that the claimant suffered amputation of toes 1 to 4, I am of the view that this is a fit case for applying multiplier method. Accordingly the loss towards permanent disability is assessed at Rs.5,56,416/- [$\text{Rs.8,000} \times 40\% = \text{Rs.3,200} = \text{Rs.11,200} \times 12 \times 18 \times 23\% = \text{Rs.5,56,416}$]

10. It is further seen that the claimant was hospitalized for a period of seven days from 22.06.2016 to 28.06.2016. The Tribunal awarded Rs.2,450/- towards “attender charges” which is on the lower side. Therefore, the award of the Tribunal towards “attender charges” is enhanced to Rs.15,000/-. The Tribunal has awarded Rs.15,000/- for “Transportation” and “Extra Nourishment”. In my view, the claimant is entitled to Rs.15,000/- each under the said heads.

11. As the multiplier method is adopted, the award of the Tribunal towards “loss of amenities”, “loss of income” and “loss of



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education” is set aside.

12. In view of the above discussion, the award of the Tribunal is modified as follows:-

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Disabilities	Rs.1,15,000	Rs.5,56,416
2.	Attender Charges	Rs.2,450	Rs.15,000
3.	Loss of Amenities	Rs.50,000	---
4.	Towards Pain and Sufferings	Rs.50,000	Rs.50,000
5.	Towards Transportation and Extra Nourishment	Rs.15,000	Transportation Rs.15,000 Nourishment Rs.15,000
6.	Loss of Income	Rs.48,000	---
7.	Damages to Clothes	Rs.1,000	Rs.1,000
8.	Loss of Education	Rs.10,000	---
9.	Total	Rs.2,91,450	Rs.6,52,416

Disability:

= Rs.8,000 x 40/100 = Rs.3,200/-

= Rs.11,200 x 12 x 18 x 23/100

= Rs.5,56,416/-.

13. In the result, the claimant shall be entitled to Rs.6,52,416/- along with 7.5% interest. It is submitted by the learned counsel for the respondent/Transport Corporation that the award passed by the Claims



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Tribunal is not deposited. It is further submitted by the learned counsel for the respondent that the appeal has been filed with a delay of 311 days and the same was condoned with a condition to forfeit interest for the delay period. In view of the said submission, there shall be a direction to the respondent/Transport Corporation to deposit the enhanced amount of Rs.3,60,966/- along with interest, less the interest for the delay period of 311 days, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same by making appropriate application before the Tribunal.

14. Accordingly, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

14.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

MSM

To

1.The III Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai.

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



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N.MALA.J.,

msm

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