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C.M.A.No.1409 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1409 of 2022

Palanisamy

...Appellant

Vs.

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

...Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree passed in M.C.O.P.No.257 of 2016 dated 25.09.2019 on the file of Motor Accidents Claims Tribunal, II Additional District Judge, Tiruvallur at Poonamallee.

For Appellant : Mrs.M.Malar

For Respondent: Mr.M.Murali Vinodh



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JUDGMENT

This appeal is filed challenging the Award and Decree passed in M.C.O.P.No.257 of 2016 dated 25.09.2019 on the file of Motor Accidents Claims Tribunal, II Additional District Judge, Tiruvallur at Poonamallee.

2. The claimant has filed the above appeal seeking enhancement of compensation.

On 29.10.2015, while the appellant was walking on Arcot Road, near Porur signal, a bus belonging to the respondent, driven by its driver in rash and negligent manner, hit the appellant, due to which, the appellant sustained grievous injuries.

3. According to the appellant, the negligence of the MTC driver resulted in the accident. The appellant was aged 40 years at the time of the accident and was self employed (Mason/ Construction work) and earning a sum of Rs.700/- per day. The appellant therefore filed the claim petition seeking Rs.10,00,000/- as compensation.

4. The respondent/ Transport Corporation filed a detailed counter denying all the averments in the claim petition including negligence, quantum and liability.



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5. Before the Claims Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to P6 in support of his claim. The respondent examined one witness R.W.1 and marked two documents, Ex.R1 and Ex.R2.

6. The Claims Tribunal on an assessment of the entire evidence on record rendered a finding of negligence against the driver of the Transport Corporation and assessed the compensation at Rs.1,00,000/- along with 7.5% interest.

7. Not satisfied with the Award passed by the Claims Tribunal, the claimant has filed the above appeal.

8. The learned counsel for the appellant submitted that this is a fit case for application of multiplier method and therefore, the Claims Tribunal erred in adopting the unit method. The learned counsel further submitted that the claimant was earning Rs.700/- per day as Mason/construction worker and because of the injuries sustained by him in the accident, he was not able to earn as before. The award under other heads according to the counsel, is meagre and deserved to be modified.



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9. 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 by this Court.

10. I have heard both the learned counsels and have perused the materials placed on record.

11. It is seen that the appellant sustained fracture of right thigh and right humer fracture, head injuries and other injuries all over the body. The Medical Board under Ex.P.6 certified that the appellant had sustained 30% permanent disability. The Claims Tribunal, without even considering the functional disability, straight away adopted the unit method, which, in my view, is unsustainable. Admittedly, the appellant was a Mason (Construction work) and therefore, the aforesaid injuries sustained by him would impact his earning capacity. Considering the nature of injuries sustained by the appellant and its impact on the appellants earning capacity. I fix the functional disability at 20%. The appellant was Mason and according to him he was earning Rs.700/- per day. In my view the claimed is on the higher side. In my opinion Rs.350/- per day for 25 days would be reasonable income.



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12. I am therefore of the view that the income of the claimant can be fixed at Rs.8,750/- per month. The compensation towards disability is arrived at Rs.3,15,000/- i.e $(8750 \times 12 \times 15 = 157500 \times 20/100 = 3,15,000/-)$.

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

<i>S.No</i>	<i>Various Heads</i>	<i>Award by Tribunal (amount in Rs.)</i>	<i>Award by this Court (amount in Rs.)</i>
1.	Compensation for disability	90,000	3,15,000/-
2.	Pain and Sufferings	5,000/-	25,000/-
3.	Extra Nourishment expenses	5,000/-	15,000/-
Total		1,00,000/-	3,55,000/-

14. I therefore find that the appellant is entitled to enhanced compensation of Rs.3,55,000/- along with 7.5% interest.

13. It is seen that in CMP.No.6258 of 2022 filed to condone the delay of 555 days, this Court vide order dated 15.06.2022 condoned the delay, on condition that the appellant would forfeit interest for the delay period of 555 days. It is therefore made clear that the appellant would not be entitled to interest for the delay period of 555 days.



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14. The respondent/Transport Corporation is directed to deposit the compensation awarded by this Court within a period of six (6) weeks from the date of receipt of copy of this Judgment, less the amount if any, already deposited. On such deposit being made, the appellant shall be entitled to withdraw the same.

In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

09.06.2022

dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No



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To.

1.The II Additional District Judge,
Motor Accidents Claims Tribunal,
Tiruvallur.

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



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N.MALA.J.,

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