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CMA.No.1376 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.03.2023

CORAM :

THE HONOURABLE MRS.JUSTICE N.MALA

Civil Miscellaneous Appeal No.1376 of 2020

Karthikeyan

... Appellant/Claimant

-Vs-

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.37, Mettupalayam Salai, Coimbatore.

... Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.02.2020 in MCOP.No.102 of 2015 on the file of the Motor Accident Claims Tribunal/Subordinate Judge Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondent : Mr.M.Murali Vinodh

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 03.02.2020 made in MCOP No.102 of 2015 on the file of the Motor Vehicle Accident Claims Tribunal/Subordinate Judge Court, Tiruchengode.



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2. The claimant has filed this appeal seeking enhancement of compensation.

3. It is the case of the appellant/claimant that, on 25.02.2015, when he was riding his two wheeler at Tiruchengode to Namakkal Main Road, Near Maramangalam Bus Stop, a bus belonging to the Transport Corporation came in the opposite direction in a rash and negligent manner, hit his two-wheeler, due to which, he fell down and sustained grievous injuries. The appellant/claimant was admitted in Krishna Hospital, as in-patient and took treatment for the injuries sustained by him in the accident. The appellant/claimant, therefore, filed the claim petition before the Motor Vehicle Accident Claims Tribunal/Subordinate Judge, Court, Tiruchengode, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the motor accident.

4. The respondent/Transport Corporation remained *ex-parte* before the Court below.

5. The appellant/claimant examined himself as P.W.1 and one Dr.Saravanan as P.W.2 and marked Exs.P1 to P9 in support of his case.



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The respondent/Transport Corporation remained *ex-parte*, and so no oral or documentary evidence was filed on its side.

6. The Tribunal, on the basis of the pleadings and on an assessment of the entire evidence on record, awarded a sum of Rs.3,79,300/- as compensation along with 7.5% interest. Not satisfied with the compensation awarded by the Tribunal, the claimant/appellant has filed this appeal seeking enhancement of compensation.

7. It is seen that the Tribunal, on the basis of Ex.P8, assessed the disability at 10% and awarded a sum of Rs.30,000/- by adopting the unit method. Under the other heads, the Tribunal awarded a sum of Rs.3,49,300/- and in toto awarded Rs.3,79,300/- as compensation.

8. The learned counsel for the appellant submits that the assessment of disability at 10% by the Medical Board under Ex.P8 was disproportionate to the nature of the injuries sustained by the claimant. The learned counsel submits that skin grafting was done in the left arm and forearm and external fixation was done in the humerus for the fracture injury and hence the assessment of disability at 10% was



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erroneous. The learned counsel would further submit that the appellant/claimant was admitted in the hospital from 25.02.2015 to 09.04.2015 and hence the award of the Tribunal under various heads like pain and suffering, extra nutrition etc., was grossly inadequate.

9. The learned counsel for the respondent, on the other hand, submits that the compensation awarded by the Tribunal is fair and reasonable and hence it does not call for any interference by this Court.

10. I have heard the learned counsel appearing for the parties and have perused the records.

11. I find that the assessment of disability at 10% as pointed out by the learned counsel for the appellant seems to be disproportionate to the nature of injuries sustained by the appellant. The appellant had shaft fracture in left humerus with brachial artery injury, extensive degloving injury in left arm and forearm and skin grafting was done in his left arm and forearm because of the deep cut injury. Considering the nature of injuries suffered by the appellant and also considering the fact that there is disfigurement, the disability is assessed at 20%. As the accident



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occurred in the year 2015, following the judgment of this Court in the case of *The Manager Vs. Rajan* in *C.M.A.No.1545 of 2020* dated **07.12.2020** an amount of Rs.5,000/- is fixed for per percentage of disability, instead of Rs.3,000/- per percentage of disability fixed by the Tribunal.

12. Considering the long period of treatment, I am of the view that the compensation of Rs.15,000/- towards pain and suffering needs to be enhanced and the same is enhanced to Rs.50,000/-. The appellant/claimant is further entitled to Rs.20,000/- towards extra nourishment and Rs.10,000/- towards attender charges. The award under the heads of transportation charges, medical bills and the loss of income is confirmed.

13. In the light of the said discussions, I deem it fit to modify the award of the Tribunal as follows:

<i>S.No.</i>	<i>Particulars</i>	<i>Award of Tribunal</i>	<i>Enhanced amount</i>	
1.	Permanent Disability	Rs. 30,000/-	Rs. 1,00,000/-	Enhanced
2.	Medical Bills	Rs. 2,65,300/-	Rs. 2,65,300/-	Confirmed
3.	Pain and Suffering	Rs. 15,000/-	Rs. 50,000/-	Enhanced
4.	Extra Nourishment	Rs. 10,000/-	Rs. 20,000/-	Enhanced
5.	Attender charges	Rs. 5,000/-	Rs. 10,000/-	Enhanced



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<i>S.No.</i>	<i>Particulars</i>	<i>Award of Tribunal</i>	<i>Enhanced amount</i>	
6.	Transportation Charges	Rs. 30,000/-	Rs. 30,000/-	Confirmed
7.	Loss of Income	Rs. 24,000/-	Rs. 24,000/-	Confirmed
		Rs. 3,79,300/-	Rs. 4,99,300/-	

14. Accordingly, the amount awarded by the Tribunal is enhanced from Rs.3,79,300/- to Rs.4,99,300/- together with interest at 7.5% per annum from the date of petition till date of deposit as compensation.

15. The respondent/Transport Corporation is directed to deposit the entire amount i.e., Rs.4,99,300/- together with interest at 7.5% per annum from the date of petition till date of deposit and costs to the credit of MCOP.No.102 of 2015 on the file of the Motor Vehicle Accident Claims Tribunal/ Subordinate Judge Court, Tiruchengode within a period of eight(8) weeks from the date of receipt of a copy of this order.

16. The appellant shall be entitled to withdraw the entire amount on such deposit by the Transport Corporation by making proper application.

Accordingly, this Civil Miscellaneous Appeal is partly allowed.



No costs.

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To
The Motor Vehicle Accident Claims Tribunal/
Subordinate Judge Court,
Tiruchengode.



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N.MALA, J.

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