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C.M.A.No.3208 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3208 of 2014

and

CMP No.12284 of 2018

Dharmalingam

.. Appellant

Vs.

The Managing Director
Tamil Nadu State Transport
Corporation (Salem Division-I) Limited
No.12, Ramakrishna Road,
Salem-636 007.

..Respondent

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 27.02.2014 made in MCOP No.31 of 2013 on the file of the Motor Accident Claims Tribunal, Tiruchengode.

For Appellant : Mr.C.Kulanthaivel

For Respondent : Mr.D.Nitin
Standing Counsel



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J U D G M E N T

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The Award dated 27.02.2014 passed in MCOP No.31 of 2013 on the file of the Motor Accident Claims Tribunal, Tiruchengode, is under challenge in the present Civil Miscellaneous Appeal.

2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.1,44,712/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Partial Loss of earnings Rs.5000 x 2 months	10,000/-
Transport to hospital	1,500/-
Extra Nourishment	5,000/-
Damages to clothing and	1,000/-



<i>Heads</i>	<i>Award Amount (Rs.)</i>
article	
Medical expenses as per Ex.A5	1,04,212/-
Pain and suffering	3,000/-
Compensation continuing or permanent disability if any and compensation for the loss of earning power	
Total	1,44,712/-

4. Before the Tribunal, the Appellant/claimant has filed 9 documents which were marked as Ex.P1 to Ex.P9 and examined herself as PW1 and the Doctor, who issued disability certificate as PW2 and the doctor who examined the claimant as PW3. On the side of the Transport Corporation, the driver of the bus was examined as RW1, but no document was marked.

5. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is not in commensuration with the grievousness of the injuries



sustained by the appellant/claimant. The appellant/claimant sustained fracture of medial Malliolus of left ankle with two long steel screws fixed in its, whose tips are touching the adjacent muscles due to the accident and had taken treatment as inpatient for a period of 15 days and also underwent operation. He was working as Chamber Manager in a brick factory and was earning about Rs.10,000/- per month and there is a loss of earning power. The PW2/doctor assessed the disability at 42% and deposed that there is a malunion of fracture and frequent giddiness and improper blood pressure. But, the Tribunal has reduced the disability to 10% without assigning any valid reason. The Tribunal has also fixed the disability at Rs.2,000/- for one percentage and calculated the compensation, which is improper and inadequate. The Tribunal has failed to adopt multiplier method considering the functional disability sustained by the appellant/claimant. The Tribunal has failed to award any amount towards future medical expenses and attender charges. The compensation awarded by the Tribunal under the heads namely pain and suffering, transport, loss of amenities, discomfort, nutrition is not adequate.



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6. The learned counsel appearing on behalf of the respondent/Transport Corporation disputed the contentions by stating that the Tribunal has assessed the compensation with reference to the documents produced by the claimant. The PW2/doctor who assessed the disability at 42% and issued the disability certificate, has not treated the claimant. Further, PW3/doctor who examined the claimant has not issued disability certificate. In such circumstances, considering the age of the claimant and nature of injuries suffered by him, the Tribunal has rightly fixed the disability at 10%. 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. The accident occurred on 25.01.2013 at about 6.00 p.m at Thiruchengode Valargate Bus Stop. The Thiruchengode Town police station registered a case in Crime No.93 of 2013 under Sections 279, 337 IPC. The appellant/claimant sustained grievous injuries on his head, right hand and



left leg footwell. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. The negligence was attributed against the driver of the respondent Transport Corporation. The findings of the Tribunal is that the bus driver had driven the vehicle in a rash and negligent manner which resulted in an accident.

8. The doctor/PW2 who assessed the disability at 42% deposed that there is a malunion of fracture and due to head injury, the claimant suffers frequent giddiness and improper blood pressure. However, the Tribunal has reduced the same to 10% without assigning any valid reason. In the considered view of this Court, after giving due consideration to the nature of the injuries, this Court assesses the disability suffered by the Appellant/claimant at 25%. As far as the quantum of compensation is concerned, the Tribunal has fixed a sum of Rs.2,000/- for one percentage. Therefore, this Court is of the considered opinion that the accident occurred in the year 2013 and fixing a sum of Rs.2,000/- is on the lesser side. The appellant/claimant was working as Chamber Manager in a Brick factory.



Thus, a sum of Rs.3,000/- for one percentage of disability would be appropriate considering the fact that the accident occurred during the year 2013.

9. A perusal of Exhibits P4 wound certificate and P5 discharge summary would reveal that the appellant/claimant sustained fracture in left medial malleous bone and grievous injury at temporal and frontal bone and taken treatment for a period of 15 days. In this regard, PW2/doctor deposed that a surgery has been done to the appellant/claimant by fixing a steel screw. In the claim petition, it was stated that the Appellant/claimant was working Chamber Manager in brick factory and was earning about Rs.10,000/- per month at the time of the accident. But, there is no proof of income. In the absence of any document, the Tribunal has rightly fixed the monthly income as Rs.5,000/- considering the age of the claimant. But, the Tribunal has awarded only a sum of Rs.10,000/- (5000 x 2) towards loss of earning which is on the lesser side. The grievous injuries caused disability and due to which, the appellant/claimant was incapacitated to perform his



work in a routine and normal manner. This Court is of the considered view that the appellant/claimant would have been unable to do his work atleast for a period of three months in a routine and normal manner. In view of the above, it would be appropriate to award a sum of Rs.15,000/- (5000 x 3 months) towards loss of earning. The Tribunal has rightly adopted the percentage method instead of multiplier method.

10. The compensation awarded by the Tribunal under the other heads namely pain and suffering and extra nourishment is inadequate and the same has to be enhanced. Accordingly, it is just and reasonable to enhance the compensation of Rs.4000/- towards pain and suffering and Rs.6,000/- towards extra nourishment.

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



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12. For the forgoing reasons, the award passed by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Partial Loss of earning	(Rs.5000 x 2) 10,000/-	(Rs.5000 x 3) 15,000/-
Transport to hospital	1,500/-	1,500/-
Extra Nourishment	5,000/-	6,000/-
Damages to clothing and article	1,000/-	1,000/-
Medical Expenses	1,04,212/-	1,04,212/-
Pain and suffering	3,000/-	4,000/-
Compensation for continuing or permanent disability or loss of earning power	20,000/- (2000 x 10%)	75,000/- (3000 x 25%)
Total	1,44,712/-	2,06,712/-

Accordingly, the claimant is entitled to a compensation of Rs.2,06,712/- (Rupees two lakhs six thousand seven hundred and twelve only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.



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13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,44,712/- to Rs.2,06,712/-.

(ii) The respondent/Transport Corporation is directed to deposit the revised compensation of Rs.2,06,712/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgement.

(iii) 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.



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(iv) The appellant/claimant is directed to pay court fee if any, on

the enhanced compensation amount. Consequently, connected miscellaneous petition is closed. No costs.

20.04.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

1.The Motor Accident Claims Tribunal,
Thiruchengode.

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



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