



C.M.A.No.2719 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A.No.2719 of 2021

Keerthi

... Appellant /Petitioner

Vs.

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

... Respondent / Respondent

Memorandum of Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 29.11.2019 passed in M.C.O.P.No.3912 of 2016 on the file of the Motor Accident Claims Tribunal, (Principal Special Judge), Chennai.

For Appellant : Mr.S.Ravikumar

For Respondent : M/s.A.Vinothraj

JUDGMENT



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This Civil Miscellaneous Petition has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P.No.3912 of 2016 dated 29.11.2019 on the file of the Motor Accident Claims Tribunal(Principal Special Judge), Chennai.

2. For the sake of convenience, the parties herein are referred to according to their litigative status before the Tribunal.

3. The case in brief is that on 12.05.2016 at about 17.00 hours, when the petitioner was a pillion rider of the Motor cycle bearing registration number TN-05-AT 8680 with properly wearing Helmet proceeding from West to East at B.B.Road and B.B.Road First street Junction, Vyasarpadi, Chennai, the respondent bus bearing registration number TN-01-N-5664 proceeding from North to South driven by its driver in a rash and negligent manner at a great high speed in a zig zag manner, dashed against the petitioner's motor cycle. Due to which the petitioner was thrown out and had sustained grievous injuries all over the body. The accident occurred only due to the rash and negligent driving of the bus driver, hence the claimant filed claim petition under Section 166 of Motor Vehicles Act, seeking



compensation of Rs.15,00,000/-.

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4. The respondent contested the claim, submitted that the driver of the bus drove the vehicle with due care and caution, observing all traffic rules and regulations and he was not rash and negligent at the time of accident. The motor cycle bearing registration No.TN 05 AT 8680 with pillioner driven by its rider with great speed from the side road into main road. On seeing the negligent act of the motor cyclist, the MTC driver gave a sound horn and applied brake and stopped the bus. But motor cyclist entered into the main road from branch road at hectic speed and unable to control his balance and dashed against the front corner body of the already stopped bus. Therefore, the rider of the motor cycle is solely responsible for the accident. The respondent driver is not responsible for the accident and the respondent corporation is not liable to pay any compensation.

5. The learned counsel for the claimant submitted, compensation awarded under the head of disability is on the lower side and the injuries sustained by the claimant has not been properly considered by the Tribunal. Hence, prays for enhancement of the compensation.



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6. After trial, Tribunal has accepted the case of the claimant and awarded Rs.1,53,000/- as compensation. Aggrieved over the quantum of compensation, seeking enhancement this appeal is filed by the claimant.

7. The learned Counsel for the Transport Corporation stated that compensation awarded under various heads by the Tribunal is very high and while awarding compensation, the Tribunal has not followed the norms.

8. I have carefully considered the submissions made by both sides and perused the materials available on record.

9. The Tribunal under the head loss of earning capacity has awarded of Rs.90,000/- due to disability sustained by the claimant. The claimant has sustained both the bone fracture on the left leg. P.W.2 who assessed the disability has stated that considering both bone fracture on the left leg, he fixed the disability as 30%, which is not a functional disability, but it is only partial and permanent disability. The disability certificate has been accepted by the Tribunal and evidence adduced by the claimant and P.W.2 would



show that the claimant has sustained both bone fracture on the left leg and also sustained other injuries all over the body and has undergone treatment in Stanley Hospital from 12.05.2016 to 30.05.2016. The Tribunal has rightly treated the injuries as not functional disability. Since the accident is of the year 2016, this Court consistently fixing Rs.5,000/- per percentage of disability as per the decision of this Court in ***M.Chinnathambi vs. S.Deepa and another reported in [CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]***.

10. Accordingly, the compensation awarded under the head loss of earning capacity is awarded under the head disability and enhanced to Rs.1,50,000/- (30x5000). The compensation for Rs.20,000/- awarded by the Tribunal for the loss of income for the treatment period is modified as Rs.30,000/- (Rs.15,000x2). The Tribunal has not awarded any amount under the head "attendant charges", however, it has awarded Rs.3,000/- under the heads of "To and fro hospital". This Court is of the view that since the claimant has undergone treatment in the hospital which require assistant for the whole day and accordingly, the compensation awarded under the head attendant charges other miscellaneous expenses is modified to Rs.10,000/-.



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Towards transportation, a sum of Rs.5,000/- is awarded. Compensation awarded under the head pain and suffering is enhanced to Rs.30,000/- and Rs.20,000/- awarded by the Tribunal under the head loss of amenities is maintained.

11. Thus, the compensation awarded by the Tribunal under various heads are hereby modified as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of earning capacity/disability	Rs.90,000/-	Rs.1,50,000/-	Enhanced
2.	Loss of income	Rs.20,000/-	Rs.30,000/-	Enhanced
3.	To and fro hospital, attenders help and other miscellaneous expenses	Rs.3,000/-	Rs.10,000/-	Enhanced
4.	Transportation	-	Rs.5,000/-	Granted
5.	Pain and sufferings	Rs.20,000/-	Rs.30,000/-	Enhanced
6.	Loss of amenities	Rs.20,000/-	Rs.20,000/-	Confirmed
Total		Rs.1,53,000/-	Rs.2,45,000/-	Enhanced by Rs.92,000/-

12. In the result, this Civil Miscellaneous Appeal is allowed and the



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compensation awarded by the Tribunal at Rs.1,53,000/- is hereby enhanced to **Rs.2,45,000/- [Rupees Two Lakhs Forty Five Thousand only]** together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The respondent Transport Corporation 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 weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.3912 of 2016, on the file of the Motor Accidents Claims Tribunal (Principal Special Judge), Chennai.

13. On such deposit, the appellant is permitted to withdraw the said amount, along with interest and costs, less the amount if any, already withdrawn without any formal application. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. In other aspects, the award of the Tribunal shall stand confirmed.

14. With the above observations, this Civil Miscellaneous Petition is



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allowed. No costs.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.

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



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K. RAJASEKAR, J.

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