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C.M.A.No.963 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 963 of 2022

R.Karthick

...Appellant

Vs.

The Managing Director
Metropolitan Transport Corporation Ltd.
Pallavan Salai, Chennai-600 003.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.12.2011 made in M.C.O.P.No.3820 of 2007 on the file of the Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellant : Mrs.P.T.Saleem Fathima

For Respondent : Mr.A.Vinothraj

JUDGMENT

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This appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 13.12.2011 made in M.C.O.P.No.3820 of 2007 on the file of the Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai.

2. The brief facts leading to the appeal are that, on 21.05.2006 at about 20.00 hours, while the appellant/claimant was travelling in MTC bus bearing Registration No.TN-01-N-1794 near Child Hospital, Halls Road, the driver of the bus drove the same in a rash and negligent manner, applied sudden brake, due to which, the appellant/claimant was thrown out from the bus and sustained grievous injuries. According to the appellant, he was aged 19 years at the time of accident and was a student and also doing some part time work in lathe unit. The appellant/claimant therefore, filed the Claim Petition claiming Rs.10,00,000/- as compensation for the injuries sustained by him in the accident.

3. The respondent/Transport Corporation contested the Claim Petition and filed a detailed counter denying the averments made in the Claim Petition including negligence, liability and quantum of compensation.

4. Before the Claims Tribunal, in support of his claim, the appellant/claimant



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examined himself as P.W.1 and Dr.Thiagarajan was examined as P.W.2 and Exs.P1 to P5 were marked. On the side of the respondent, the driver of the bus was examined as R.W.1 and no document was filed.

5. The Claims Tribunal, on an assessment of entire evidence on record, rendered the finding of negligence against the driver of the bus and assessed compensation at Rs.2,39,500/- along with 7.5% interest. Not satisfied with the award passed by the Tribunal, the appellant/claimant has filed the above appeal for enhancement of compensation.

6. Learned counsel appearing for the appellant/claimant submitted that the Tribunal had failed to award any sum towards future prospects, loss of amenities and marital prospects. The award of the Tribunal under other heads was also very meagre. The learned counsel further submitted that the appellant/claimant had suffered amputation of left forefoot, which was a scheduled permanent disability and the Tribunal ought to have therefore awarded fair and just compensation and on these grounds, prayed for enhancement of compensation.

7. Learned counsel for the respondent/Transport Corporation on the other



hand submitted that the award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

8. I have heard both the learned counsel and perused the entire materials placed on record.

9. The contention of the learned counsel for the appellant that the Tribunal ought to have awarded 40% towards future prospects is justified and in conformity with the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in (2017) 16 SCC 680. Therefore, loss towards permanent disability needs to be modified. The Tribunal has fixed a sum of Rs.3,000/- per month as income of the appellant and assessed the disability at 30%. After adding 40% towards future prospects ($\text{Rs.3,000/-} \times 40/100 = 1,200$), the monthly income of the deceased would be Rs.4,200/- ($\text{Rs.3,000} + 1200$). The Tribunal had adopted multiplier '16', which is erroneous. As the age of the appellant/claimant was 19 years at the time of accident, the appropriate multiplier would be '18'. Thus, the compensation towards permanent disability is arrived at Rs.2,72,160/- [$\text{Rs.4,200/-} \times 12 \times 18 \times 30\%$].

10. It is seen from the records that the appellant/claimant was hospitalised



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for 8 days for the injuries sustained by him in the accident and therefore, in my view, award towards transportation to hospital and extra nourishment deserve to be enhanced from Rs.3,000/- to Rs.10,000/- and from Rs.5,000/- to Rs.15,000/- respectively.

11. Learned counsel for the appellant further submitted that the Tribunal did not award any sum towards loss of amenities and marital prospects. The appellant was aged 19 years at the time of accident and because of the amputation of his left forefoot, he developed a limb in the foot and hence his marital prospects would be affected. Considering that the left forefoot of the appellant/claimant was amputated, I am of the view that the appellant/claimant is entitled to fair compensation towards loss of amenities and marital prospects and accordingly, Rs.15,000/- and Rs.25,000/- respectively are awarded under these heads. The compensation awarded by the Tribunal under all other heads are hereby confirmed.

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



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S.No	Various Heads	Awarded by the Tribunal	Awarded by this Court
1.	Loss of income	Rs.15,000/-	Rs.15,000/-
2.	Transport to hospital	Rs.3,000/-	Rs.10,000/-
3.	Extra nourishment	Rs.5,000/-	Rs.15,000/-
4.	Damage to clothing	Rs.1,000/-	Rs.1,000/-
5.	Medical expenses	Rs.7,700/-	Rs.7,700/-
6.	Pain and sufferings	Rs.35,000/-	Rs.35,000/-
7.	Permanent disability	Rs.1,72,800	Rs.2,72,160/-
8.	Loss of amenities	-	Rs.15,000/-
9.	Loss of marital prospects	-	Rs.25,000/-
	Total	Rs.2,39,500/-	Rs.3,95,860/- enhanced compensation Rs.1,56,360/-

The appellant/claimant is entitled to the total compensation of Rs.3,95,860/- along with interest at the rate of 7.5% per annum (excluding the default period from 04.07.2011 to 13.10.2011) from the date of petition till the date of deposit.

13. It is submitted by the learned counsel for the respondent that appeal was filed with the delay of 2919 days and delay was condoned on condition that the appellant shall forfeit the interest for the delay period of 2919 days. In view of the above submission, it is made clear that the appellant/claimant is not entitled for any



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interest for the delay period of 2919 days on the amount of Rs.1,56,360/-

enhanced by this Court, as per the order of this Court dated 07.04.2022 made in

C.M.P.No.17840 of 2021 in C.M.A.SR.No.94966 of 2021.

14. Learned counsel for the respondent/Transport Corporation submitted that the amount awarded by the Tribunal along with accrued interest and costs has already been deposited before the Tribunal. In view of the said submission, there shall be a direction to the respondent to deposit the enhanced amount of Rs.1,56,360/- along with 7.5% interest and costs, less the amount already deposited if any, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant shall be entitled to withdraw the same along with interest and costs, by making proper application before the Tribunal.

15. It is submitted by the learned counsel for the appellant that the appeal was valued at Rs.1,00,000/-. In view of the said submission, there shall be a direction to the appellant to deposit the deficit Court fee. The Registry is directed not to draft the decree until the Court fee for enhanced amount is paid.

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16. The appeal is accordingly partly allowed. There shall be no order as to costs.

12.06.2023

Speaking Order: Yes/No

Index: Yes/No

Neutral Citation: Yes/No

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To

1.The IV Judge
(Motor Accident Claims Tribunal)
Small Causes Court, Chennai.

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

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N.MALA.J.,

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