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C.M.A.No.3407 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3407 of 2021

Venkatesan

... Appellant / petitioner

Vs.

The Managing Director
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 25.11.2019, made in M.C.O.P.No.5443 of 2016, on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

For Appellant : Mr. M. Mahendran
For Mr. N. M. Muthurajan
For Respondent : Mr. A. Vinothraj

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation against the award passed in



M.C.O.P.No.5443 of 2016, dated 25.11.2019, on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that he was travelled in a two-wheeler as a pillion rider bearing Registration No.TN 22 AZ 3776 along with his friends on 21.03.2016 at about 23.30 hours on 200 feet radial from Chrompet to OMR road, while he reached near Vels College Signal, a bus belongs to the respondent herein, driven by its driver in rash and negligent manner in the opposite direction and hit against him, which resulted in causing severe injuries to him. Hence, the claimant filed claim petition claiming a sum of Rs.10,00,000/- as compensation.

4. The claim was restricted by the respondent on the ground that the driver of the bus was driven the same with due care and caution, but the two-wheeler came in the wrong direction and lost control and hit on the

bus hence, the Transport Corporation is not liable to pay any compensation and prays to dismiss the claim. The Insurance Company has not filed any appeal by challenging the liability fixed on them.

5. Before the Tribunal, the claimant examined P.W.1 and P.W.2 and Exs.P1 to P12 were marked. On the side of the respondent R.W.1 was examined and no documentary evidence marked.

6. The Tribunal based on the evidences placed on record, in Point No.1 has held that the negligent act on the part of the driver of the bus is responsible for the accident. In Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.1,70,000/- as compensation payable to the claimant along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization.

7. Aggrieved over the quantum of compensation fixed by the Tribunal, the claimant has come forward with this appeal seeking enhancement of compensation.



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8. The learned counsel for the claimant has submitted that the claimant has sustained severe injuries on both the mandible area on the head as well as the injuries on his Jaw, which resulted in disfigurement and permanent disability and the same was not properly appreciated by the Tribunal while awarding compensation. He further submitted that the compensation awarded under various heads is also on the lower side hence, prays to enhance the compensation.

9. Per Contra, the learned counsel for the respondent/Transport Corporation has submitted that the Tribunal has properly appreciated the evidence on record has rightly awarded compensation and there is no need for enhancement of compensation hence prays to dismiss the appeal.

10. I have considered the rival submissions made on both sides and also perused the entire records.

11. To prove the disability, the claimant has examined P.W.2, who is the Private Doctor and he has issued the Disability Certificate, which was marked as Ex.P12, wherein, he has recorded that the claimant has sustained fracture injury on the mandible area and noted the following

injuries: “Communitied fracture on the left and right mandible dislocation of Jaw”. Ex.P3 is the Treatment Book, issued by the Rajiv Gandhi Medical College Hospital, Chennai, wherein, on perusal of the same, it shows that the claimant has undergone surgeries on the right and left mandible region. After treatment, he was once again referred to the Mahathma Gandhi Post Graduate Institution of Dental Science, Pondicherry and there also he was subjected to surgeries for preventing jaws adjustment.

12. Ex.P3 – Discharge Note also shows that the injured was admitted into the Hospital on 22.03.2016 and discharged on 01.04.2016. Ex.P4 - Case Records of Mahathma Gandhi Post Graduate Institute of Dental Science, Pondicherry, shows that he was continuously undergone treatment and he was earlier admitted into the hospital on 05.04.2016 and discharged on 15.04.2016. Based on the above exhibits, P.W.2 has assessed the disability as 45%. The Tribunal after considering the above documents, assessed and fixed the disability as 30%. Since the private Doctor has assessed the disability by interpreting the Discharge Summary and the evidence of P.W.2, the Tribunal has fixed the percentage of disability as 30%.



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13. On perusal of Exs.P3, P4 and P12, it shows that major injury sustained by the claimant is on the mandible area, which resulted in dislocation of Jaw and the disability assessed by P.W.2 for the whole body and however, considering the subsequent treatment and the evidence of the claimant, the Tribunal has assessed the disability as 30%, since it has revealed that there is no functional permanent disability, this Court is of the view that percentage of disability is fixed by the Tribunal is proper. However, the Tribunal has adopted percentage method for granting compensation and awarded a sum of Rs.3,000/- per percentage. The Judgment of this Court in ***Chinnatambi vs. Deepa [2020 (1) TN MAC 617]*** has held that the accident taken place in the year 2016 onwards, a sum of Rs.5,000/- has taken by calculating percentage method for awarding compensation. Accordingly, under the head Disability the compensation is modified into Rs.3,000/- into Rs.5,000/- and a sum of Rs.1,50,000/- is granted under the head loss of earning capacity [5000 x 30%].

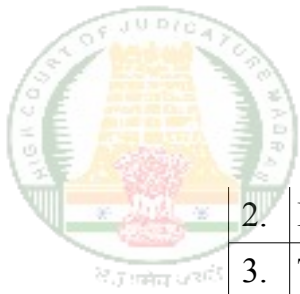
14. The Tribunal has awarded a sum of Rs.20,000/- under the head loss of income during the treatment period. Exs.P3 and P4 shows that



the claimant had undergone in-patient treatment for more than 23 days and accordingly, the Tribunal has awarded Rs.30,000/- and this Court finds the same is proper and no need for modification. However, the Tribunal has awarded compensation for a sum of Rs.5,000/- under the head Transport Charges as well as the Attender Charges in one head and this Court is of the view that the compensation awarded in both heads shall be separately awarded. Since the claimant has undergone treatment at Government Hospital for nearly 23 days, I am of the view that he is entitled for compensation under the head attender charges for a period of two months. Accordingly, a sum of Rs.12,000/- is awarded under the head attender charges and he is also entitled for transport charges for a sum of Rs.5,000/-. As far as the compensation awarded under other heads are concerned, the same is just and reasonable and the same is hereby confirmed.

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

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Partial Loss of income	Rs.20,000/-	Rs.20,000/-	Confirmed



2.	Loss of earning capacity	Rs.90,000/-	Rs.1,20,000/-	Enhanced
3.	To and fro hospital, attenders help and other miscellaneous expenses / Attender charges Transportation charges	Rs.5,000/-	Rs.12,000/- Rs.5,000/-	Enhanced
4.	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-	Confirmed
5.	Loss of Amenities	Rs.30,000/-	Rs.30,000/-	Confirmed
	Total	Rs.1,70,000/-	Rs.2,12,000/-	Enhanced by Rs.42,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.1,70,000/- is hereby enhanced to Rs.2,12,000/- [Rupees Two Lakhs Twelve 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.5443 of 2016, on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under EC & NDPS Act, Chennai. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with proportionate interest and costs, less the amount, if any, already withdrawn.



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Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation.

In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

01.11.2023

ssi

Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Principal Special Judge,
Special Court under EC & NDPS Act,
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.



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K.RAJASEKAR,J.

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