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C.M.A.No.3331 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3331 of 2019

Varnamalai

... Appellant

Vs.

1. Dhanalakshmi
2. The Managing Director,
Tamilnadu State Transport Corporation Limited,
Salem.

3. The Manager,
The New India Assurance Company Limited,
Situating at
Commercial Complex,
No.1, Officer's Line,
Vellore.

...

Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to enhance and to set aside the award dated 27.07.2017 made in M.A.C.T.O.P.No.394 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Tiruvannamalai.

For Appellant : M/s.M.Malar

For Respondents : No Appearance [R1 & R2]
Mr.Chandran [R3]



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JUDGMENT

The above appeal is filed by the appellant/claimant seeking to enhance and to set aside the award dated 27.07.2017 made in M.A.C.T.O.P.No.394 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Tiruvannamalai.

2. It is the case of the appellant that, on 23.06.2015 at about 1.15 p.m, when the appellant was travelling as coolie in an Eicher Van bearing Regn.No.TN 21 J 9661, at that time the driver of the above said Van has driven the vehicle in a rash and negligent manner and dashed a bus bearing Regn.No.TN 30 N 0895, due to which the appellant sustained grievous injuries and was admitted in the hospital. Claiming a sum of Rs.5,00,000/-, the appellant has filed the claim petition. After adjudication the Tribunal has directed the third respondent / insurance company to pay a sum of Rs.2,50,600/- as compensation to the appellant and thereafter recover the said amount from the first respondent / owner of the bus. Not satisfied with the same, the appellant has filed the present appeal.



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4. The learned counsel appearing for the appellant submitted that, due to the rash and negligent driving of the driver of the bus, the said accident occurred. He further submits that though the individual doctor has assessed the disability at 50%, however, the Tribunal has fixed only a sum of Rs.3,000/- per percentage of disability which *per se* unsustainable and the same requires to be re-considered by this Court. Accordingly, he prays for appropriate enhancement in favour of the appellant.

5. The learned counsel appearing for the third respondent/Insurance Company submitted that upon taking into consideration all the relevant documents, the Tribunal has rightly fixed the disability at 50% and awarded a sum of Rs.1,50,000/- towards disability, which is wholly sustainable and the same does not require any enhancement. Further, he submits that the other heads awarded by the Tribunal below is just and reasonable for the injuries sustained by the appellant. Accordingly, he prays for dismissal of the appeal.



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Though the respondents 1 and 2 were served, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the third respondent and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/claimant is with regard to the quantum of compensation awarded. Based on the injuries sustained by the appellant, the tribunal has assessed the disability at 50% and fixed a sum of Rs.3,000/- per percentage of disability awarding a sum of Rs.1,50,000/- towards disability. However, at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.4,000/- per percentage of disability. Hence, this Court is inclined to fix a sum of Rs.4,000/- per percentage of disability. Therefore, the amount under the head disability stands enhanced to a sum of Rs.2,00,000/- ($50 \times \text{Rs.4,000/-} = \text{Rs.2,00,000/-}$).



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No amount has been awarded under the head “attender charges”, hence this Court is inclined to fix a sum of Rs.5,000/- under the said head. This Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

9. In view of the above, the compensation awarded by the Tribunal is modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Disability	1,50,000/-	2,00,000/- (enhanced)
2	Pain and Sufferings	60,000/-	60,000/-
3	Loss of earning during treatment period	30,000/-	30,000/-
4	Medical Expenses	600/-	600/-
5	Extra nourishment	10,000/-	10,000/-
6	Attender charges	-	5,000/-
	Total	2,50,600/-	3,05,600/-

10. **Accordingly**, this appeal is partly allowed and the compensation amount is enhanced from Rs.2,50,600/- to Rs.3,05,600/- and the third respondent/Insurance Company is directed to deposit the



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compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.394 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellant/claimant is directed to pay necessary additional Court fee on the enhanced compensation amount and thereafter, the third respondent/Insurance Company is at liberty to recover the said amount from the first respondent in the manner known to law. There shall be no order as to costs in the present appeal.

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Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To



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1.Motor Accident Claims Tribunal, Special Sub Judge (MCOP),
Tiruvannamalai.

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

M.DHANDAPANI, J.



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