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C.M.A.No.2929 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.07.2024**

CORAM

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**C.M.A.No.2929 of 2021**

A.Kamalanathan @ Kamal

... Appellant

Vs.

The Managing Director,  
Metropolitan Transport Corporation Ltd.,  
Pallavan House, Anna Salai, Chennai - 2.

... Respondent

**PRAYER:** Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Order and Decree dated 26.10.2017 made in M.C.O.P. No.5402 of 2001 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.M.Sivakumar  
for Mr.N.Manoharan

For Respondent : Mr.M.Murali Vinoth

**JUDGMENT**

This appeal has been filed by the claimant, seeking for enhancement of compensation. The Tribunal under the impugned award has directed the



respondent Transport Corporation to pay the appellant / claimant a total compensation of Rs.2,39,500/- as detailed hereunder:

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| <i><b>Heads</b></i>                          | <i><b>Amount awarded by<br/>the Tribunal in Rs.</b></i> |
|----------------------------------------------|---------------------------------------------------------|
| Pain and Sufferings                          | 20,000                                                  |
| Transport and Extra Nourishment              | 5,000                                                   |
| Disability and thereby loss of future income | 1,92,000                                                |
| Loss of Income for 2 months (2 x Rs.5,000/-) | 10,000                                                  |
| Attender Charges                             | 3,300                                                   |
| Medical Bills                                | 4,143                                                   |
| Loss of amenities                            | 5,000                                                   |
| <b>Total</b>                                 | <b>2,39,443</b>                                         |
| <b>Rounded off</b>                           | <b>2,39,500</b>                                         |

2. The appellant / claimant had sustained head injury. According to the appellant / claimant both his ears were damaged and also loss his hearing. The E.N.T. Doctor (PW2) has assessed the disability at 70%. The neuro Doctor (PW3) has assessed the disability at 75%. The disability certificate issued by the E.N.T. Doctor has been marked as Ex.P20 and the disability certificate issued by the neuro Doctor has been marked as Ex.P25.

3. The Tribunal has fixed the permanent disability of the appellant / claimant at 20% after giving due consideration to the disability certificate



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issued by the E.N.T. Doctor and the neuro Doctor. The appellant is aggrieved by the reduction of the disability by the Tribunal to 20%, as according to him, the Tribunal ought to have accepted the disability fixed by the E.N.T. Doctor and neuro Doctor as correct for the purpose of assessing the compensation payable to the appellant / claimant towards his loss of earning capacity.

4. The appellant / claimant is present before this Court today. Certain questions were put to him. Though he could not understand those questions clearly, he was able to give answers to them if the questions were put to him little louder. The accident happened in the year 2001. At that time, the appellant / claimant was 34 years. Now, he is 57 years old. He seems to be in a reasonably good condition. But, having sustained head injury and a fracture in his skull bone, this Court is of the considered view that the fixation of 20% as permanent disability of the appellant / claimant by the Tribunal is low and it has to be enhanced to 25%. However, the claim of the appellant in this appeal that the Tribunal ought to have fixed the permanent disability of the appellant / claimant by accepting the disability certificate issued by both the E.N.T. Doctor and the neuro Doctor cannot be accepted



by this Court, after this Court had personally seen the appellant / claimant and had also put questions to him, for which answers were also given by him.

5. The accident happened in the year 2001 and now, we are in 2024. If the appellant / claimant had sustained grievous injuries in the head, he would not have survived more than 23 years from the date of the accident. Only after giving due consideration to the evidence available on record and after seeing the appellant / claimant and his personal condition, this Court deems it fit to enhance the disability of the appellant / claimant to 25% instead of 20% fixed by the Tribunal.

6. The Tribunal has rightly adopted the multiplier method since the appellant / claimant had sustained head injury and fracture in his skull bone.

7. The Tribunal has fixed the notional monthly income of the appellant / claimant at Rs.5,000/-, which in the considered view of this Court is a correct assessment in view of the fact that the appellant / claimant is a tri-cycle operator at the time of the accident. Since this Court has enhanced



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the disability of the appellant / claimant to 25% from 20% fixed by the Tribunal, the compensation payable to the appellant / claimant towards loss of earning capacity is enhanced to Rs.2,40,000/-.

8. The Tribunal has correctly adopted multiplier '16' since the appellant / claimant was aged 34 years at the time of the accident. In so far as the compensation awarded by the Tribunal under various other heads viz., Pain and Sufferings, Attender Charges and Medical Bills are concerned, the compensation awarded by the Tribunal under those heads is a just compensation and it does not call for any further interference by this Court.

9. However, since the appellant / claimant had sustained head injury and also fracture in his skull bone, the compensation awarded by the Tribunal towards transport and extra nourishment are modified and it is awarded separately viz., towards extra nourishment, a sum of Rs.5,000/- is awarded and towards transportation, a sum of Rs.10,000/- is awarded by this Court.



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10. The Tribunal has awarded a compensation of Rs.5,000/- towards loss of amenities, which is low, and it has to be enhanced to Rs.10,000/- by this Court.

11. Since the Tribunal has adopted multiplier method for assessing the loss of earning capacity of the appellant / claimant, the question of awarding compensation towards loss of income once again will not arise as it would amount to duplication. The Tribunal has erroneously awarded loss of earning capacity in addition to another compensation of Rs.10,000/- towards loss of income, which cannot be granted, as it would amount to duplication and the same has to be set aside by this Court.

12. For the foregoing reasons, the compensation payable by the respondent Insurance Company is re-worked in the following manner:

| <i><b>Heads</b></i>                          | <i><b>Amount awarded by the Tribunal in Rs.</b></i> | <i><b>Amount awarded by this Court in Rs.</b></i> |
|----------------------------------------------|-----------------------------------------------------|---------------------------------------------------|
| Pain and Sufferings                          | 20,000                                              | 20,000                                            |
| Extra Nourishment                            | 5,000                                               | 5,000                                             |
| Transportation                               | -                                                   | 10,000                                            |
| Disability and thereby loss of future income | 1,92,000                                            | 2,40,000                                          |
| Loss of Income for 2 months (2 x             | 10,000                                              | -                                                 |



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| <i><b>Heads</b></i> | <i><b>Amount awarded by the Tribunal in Rs.</b></i> | <i><b>Amount awarded by this Court in Rs.</b></i> |
|---------------------|-----------------------------------------------------|---------------------------------------------------|
| Rs.5,000/-)         |                                                     |                                                   |
| Attender Charges    | 3,300                                               | 3,300                                             |
| Medical Bills       | 4,143                                               | 4,143                                             |
| Loss of amenities   | 5,000                                               | 10,000                                            |
| <b>Total</b>        | <b>2,39,443</b>                                     | <b>2,92,443</b>                                   |
| <b>Rounded off</b>  | <b>2,39,500</b>                                     | <b>2,92,500</b>                                   |

13. In the result, this Civil Miscellaneous Appeal is **partly allowed** by enhancing the award amount from **Rs.2,39,500/-** to **Rs.2,92,500/-**. The respondent/insurance company is directed to deposit the enhanced award amount of **Rs.2,92,500/-**, after deducting the amount already deposited, if any, together with interest at the rate of **7.5%** per annum from the date of the claim petition till the date of deposit and cost to the credit of **M.C.O.P. No.5402 of 2001** on the file of the **Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai**, within a period of **six weeks** from the date of receipt of a copy of this judgment.

14. The appellant/claimant is permitted to withdraw the said amount, once it is deposited by the respondent/Insurance Company, by filing an appropriate application before the Tribunal. On such application being



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made, the Tribunal shall transfer the amount lying to the credit of **M.C.O.P.**

**No.5402 of 2001** to the bank account of the appellant directly through

RTGS, within a period of **one week** thereafter. No costs.

**04.07.2024**

Index : Yes/No

Speaking Order : Yes / No

Neutral Citation Case: Yes / No

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To

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1. The Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.
2. The Section officer, Record Section, High Court of Madras.



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**ABDUL QUDDHOSE. J.,**

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