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C.M.A. No. 2413 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2413 of 2021

Devaraj

... Appellant / Petitioner

Vs.

1. Vimalraj

2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem - 636 007.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 18.03.2021 passed in M.C.O.P. No. 135 of 2019 on the file of the I Special Subordinate Judge, Motor Accident Claims Tribunal, Salem.

For Appellant : M/s. T.S. Arthanareeswaran

For R1 : M/s. P. Jagadesan

For R2 : M/s. Nitin



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 135 of 2019, dated 18.03.2021 on the file of the I Special Subordinate Judge, Motor Accident Claims Tribunal, Salem.

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

3. On 27.07.2018, at about 10:45 AM, the claimant was riding a Super Splendor motorcycle bearing Registration No.TN-30-L-2544 on Kalparapatty to Elampilli Road, while he reached near Veerapathira Kalamman Kovil, a TNSTC bus bearing Registration No.TN-30-N-0405 came behind in a rash and negligent manner, hit on the backside of the claimant's motorcycle causing grievous injuries to the claimant. A criminal case was registered against the driver of the TNSTC bus in Cr.No.265/2018 under section 279, 337 of IPC on the file of Magudamchavadi Police Station, Salem District. For the injuries sustained, the claimant has filed this claim petition seeking compensation for a sum of Rs.15,00,000/- under



section 166 of the Motor Vehicles Act, 1988.

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4. The first respondent, who is the driver of the TNSTC bus, filed a counter and stated that he drove the bus with due care and caution and also contended the rash and negligence on the part of the claimant, who without noticing on coming vehicles has suddenly entered from the sub road to main road and dashed against the respondent's bus and invited the accident, hence prays to dismiss the claim petition.

5. The second respondent - Transport Corporation filed a counter and disputed the age, income, occupation, injuries sustained, disability and medical expenses of the claimant and further contended that the accident was taken place only due to the rash and negligence on the part of the claimant, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.9 and Court Ex.C.1 - disability certificate issued by Salem Medical Board and Ex.C.2 - Medical Board report were marked. On the side of the respondent, R.W.1 was examined



and no exhibits were marked.

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7. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the first respondent's bus driver is responsible for the accident. In point nos.2 and 3, the Tribunal has quantified and granted compensation for a sum of Rs.5,69,216/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the part of the second respondent - Transport Corporation to pay the awarded compensation to the claimant.

8. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation.

9. The learned counsel appearing for the claimant submitted that, the Medical Board and the Tribunal has not properly considered the nature of injuries sustained and the disability of the claimant and fixed 5% permanent disability and awarded compensation by adopting percentage method. He also further submitted that the compensation awarded under



various other heads are on the lower side, hence prays to enhance the compensation.

10. Per contra, the learned counsel appearing for the Transport Corporation submitted that based on the evidences placed on record, the Tribunal has awarded a just compensation, hence prays to confirm the award.

11. Heard the submissions made on both sides and perused the materials placed on record:

12. The major contention raised by the claimant is that he sustained grievous injuries and fractures, but the percentage of disability fixed by the Medical Board and the Tribunal is not proper, hence prays to modify the award and to enhance the quantum of compensation awarded under other heads. The Transport Corporation has not filed any appeal challenging the liability fixed on them.



13. Ex.P.2 – Wound certificate and Ex.P.3 and P.4 – discharge

summaries shows that the claimant has sustained following injuries:

“Traumatic brain injury with base of skull fracture and maxillofacial injury, Right multiple ribs fracture with right pneumothorax and Left clavicle fracture” and the above injuries have been treated by undergoing ortho surgery in the hospital. Ex.C.1 – Disability certificate of the claimant and Ex.C.2 - Medical Report issued by the Medical Board shows that the claimant has been examined by Psychiatric and Ortho Doctors and they have assessed the disability sustained by the claimant is only 5% permanent disability and recorded that the claimant has sustained fracture in the left collar bone and in the right shoulder. The Tribunal after appreciating the disability certificate and Report of the Medical Board has held that the claimant has sustained non functional disability and awarded compensation Rs.25,000/- by adopting percentage method by granting Rs.5,000/- per percentage of disability. Considering the age of the claimant, year of accident, nature of injuries and the Medical Board Report, this Court is of the view that the Tribunal has properly awarded compensation under the head disability, hence this Court is inclined to confirm the same.



14. Considering the nature of injuries and period of treatment, the Tribunal has awarded Rs.50,000/- under the head pain and suffering and Rs.25,000/- towards loss of amenities, however, based on Ex.C.1, Ex.P.3 and P.4 - discharge summaries, the claimant has sustained traumatic brain injury and fracture in the skull, considering the above injuries, this Court is of the view that the compensation awarded under the head pain and suffering and loss of amenities is on the lower side, hence this Court is inclined to award Rs.75,000/- towards pain and suffering and Rs.50,000/- towards loss of amenities.

15. With regard to loss of income during the treatment period, before the Tribunal, the claimant has submitted that he was doing textile business and earning Rs.30,000/- per month, but to prove the same, the claimant has not adduced any oral or documentary evidence, hence the Tribunal by considering the age of the claimant has fixed Rs.7,500/- as the monthly income of the deceased. The Tribunal based on Exs.P.2 to P.4 - medical records and the nature of injuries sustained by the claimant and taking note of the fact that he has undergone in-patient treatment for 20 days in two hospitals and subsequently, continued his treatment, hence held that,



the claimant would have lost his income for a period of three months, hence awarded Rs.22,500/- (Rs.7,500/- x 3) as loss of income for the claimant during his treatment period. This Court is of the view that the monthly income fixed by the Tribunal is on the lower side, hence this Court is inclined to modify the monthly income of the claimant as Rs.12,000/- and accordingly, the compensation under loss of income during the treatment period is modified as Rs.36,000/- (Rs.12,000/- X 3).

16. The Tribunal has awarded Rs.10,000/- towards attender charges, considering the treatment period and nature of injuries, this Court is of the view that, the claimant would have been assisted by an attender during his entire treatment period of three months, hence, this Court is inclined to modify the attender charges to Rs.22,500/- by fixing Rs.7,500/- per month for the attender. Whereas the other heads are concerned the Tribunal has awarded a just compensation and the same are hereby confirmed.

17. Accordingly, the award passed 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 reduced
1.	Pain and Sufferings	50,000/-	75,000/-	Enhanced
2.	Loss of income during the treatment period	22,500/-	36,000/-	Enhanced
3.	Medical expenses	4,15,716/-	4,15,716/-	Confirmed
4.	Transportation Charges	10,000/-	10,000/-	Confirmed
5.	Extra Nourishment	10,000/-	10,000/-	Confirmed
6.	Attender Charges	10,000/-	22,500/-	Enhanced
7.	Damage to articles	1,000/-	1,000/-	Confirmed
8.	Loss of amenities	25,000/-	50,000/-	Enhanced
9.	Permanent Disability	25,000/-	25,000/-	Confirmed
	Total Compensation	5,69,216/-	6,45,216/-	Enhanced

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,69,216/- is hereby enhanced to **Rs.6,45,216/- [Rupees Six Lakh Forty Five Thousand Two Hundred and Sixteen only]** together along with interest at the rate of **7.5% per annum** from the date of filing of Claim Petition till the date of realization, excluding the default period, if any. The Second Respondent - Transport Corporation is directed to deposit the amount awarded 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



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judgment to the credit of M.C.O.P.No.135 of 2019 on the file of the I Special Subordinate Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the claimant/ appellant herein is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since, this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

04.01.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The I Special Subordinate Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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