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C.M.A. No. 3076 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.3076 of 2021

Nixon Raj

... Appellant / Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Chennai.

... Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 12.11.2019 passed in M.C.O.P. No. 776 of 2016 on the file of the Principal Special Judge, Motor Accident Claims Tribunal, Special Court under E.C. And NDPS Act, Chennai.

For Appellant : M/s. Ramya V. Rao

For Respondent : M/s. F. Sabastin



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant/appellant seeking enhancement of compensation awarded in M.C.O.P. No. 776 of 2016 on the file of the Principal Special Judge, Motor Accident Claims Tribunal, Special Court under E.C. And NDPS Act, Chennai. The case of the claimant is that on 19.01.2016, at about 11:50 AM, the claimant was riding a motorcycle bearing Registration No.TN-18-B-3550 in Binnys road, while he reached near Spencer plaza signal, a MTC bus bearing Registration No.TN-01-N-5205, driven by its driver in a rash and negligent manner, dashed against the claimant's motorcycle, thereby causing grievous injuries to him. For the injuries sustained by him, the claimant has filed claim petition seeking compensation for a sum of Rs.10,00,000/- by invoking section 166 of the Motor Vehicles Act, 1988.

2. The respondent – Transport Corporation filed a counter and denied the manner in which the accident has taken place and contended that the accident was taken place only due to the negligence on the part of the claimant. The respondent also disputed the nature of injuries sustained,



treatment period and the compensation claimant under various heads.

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3. Based on the evidences placed on record, the Tribunal has held that the negligent act on the part of the respondent's driver is responsible for the accident and also quantified and granted compensation for a sum of Rs.1,65,620/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

4. Aggrieved over the quantum of compensation awarded, the claimant has filed this appeal seeking enhancement of compensation. The respondent – Transport Corporation has not preferred any appeal against the award.

5. The major grievances raised by the learned counsel for the claimant is that the notional income fixed by the Tribunal and the compensation awarded under various heads are on the lower side and more particularly, the compensation awarded under the head disability is to be enhanced as per the norms followed by this Court.



6. The learned counsel appearing for the respondent – Transport Corporation submitted that the Tribunal based on evidences placed on record has awarded just compensation, hence prays to confirm the award.

7. I have considered the submissions made on both sides and perused the materials available on record.

8. As per the Ex.P.12 – disability certificate, the P.W.2 – Doctor, who assessed the disability of the claimant as 40% and deposed before the Tribunal that the injured was sustained both bone fracture on the right leg and he was treated conservatively with an application of slab above the knee and no surgery was done to him. The Tribunal after recording the fact that the claimant has not undergone any surgery and the injuries sustained by him was only treated conservatively fixed the disability as 30%. This Court finds no infirmity in above fixing of disability percentage by the Tribunal and the same is hereby confirmed.

9. The Tribunal adopted percentage method by granting Rs.3,000/- per percentage of injury and awarded Rs.90,000/- under the head



Disability. This Court judgment in *M. Chinnathambi vs. S. Deepa and another* reported in *[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]*, has awarded Rs.5,000/- per percentage of disability for the accident cases taken place from the year 2016 onwards, hence, considering the date of accident and also the age of the claimant herein, this Court is inclined to modify the award of Rs.3,000/- per percentage of disability by the Tribunal to Rs.5,000/- hence, the total compensation granted under the disability is modified to Rs.1,50,000/- (Rs.5,000/- x 30% of disability).

10. As far as the notional income fixed for the purpose of awarding compensation under the head loss of income during the treatment period is concerned, the claimant relied on the Ex.P.7 - salary certificate but no employer or any other person, who speaks about the salary certificate examined and same was not proved before the Tribunal. Therefore, the Tribunal has rightly rejected the salary certificate and notionally fixed Rs.10,000/- per month and by considering the nature of injuries granted two months loss of income and awarded Rs.20,000/- as compensation under the head loss of income during the treatment period. This Court finds no infirmity in the above fixing of notional income and granting of



compensation under the head loss of income during the treatment period and the same is hereby confirmed.

11. Based on Ex.P.6 – Medical bills, the Tribunal has awarded Rs.32,620/- under the head medical bills, the Tribunal has also awarded Rs.3,000/- under the head Nutritious food and Rs.10,000/- each under the head pain and suffering and loss of amenities. This Court finds the compensation awarded under the above heads are just and reasonable and the same is hereby confirmed.

12. 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.	Loss of earning capacity/ Disability @ 30%	90,000/-	1,50,000/-	Enhanced
2.	Partial loss of income	20,000/-	20,000/-	Confirmed
3.	Medical bills	32,620/-	32,620/-	Confirmed
4.	Nutritious food and other miscellaneous expenses	3,000/-	3,000/-	Confirmed
5.	Pain and suffering	10,000/-	10,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
6.	Loss of Amenities	10,000/-	10,000/-	Confirmed
	Total Compensation	1,65,620/-	2,25,620/-	Enhanced

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,65,620/- is hereby enhanced to **Rs.2,25,620/- [Rupees Two Lakh Twenty Five Thousand Six Hundred and Twenty only]** along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The 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 judgment to the credit of M.C.O.P.No.776 of 2016 on the file of the Principal Special Judge, Motor Accidents Claims Tribunal, Special Court under E.C. & NDPS Act, Chennai. On such deposit, the appellant/ claimant 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



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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.

09.02.2024

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal Special Judge,
Special Court under E.C. And NDPS Act,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

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