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C.M.A.No.2779 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2779 of 2021

Thilagavathy

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Vazhuthareddy and Post,
Villupuram Taluk.

... Respondent

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 09.01.2020 made in M.C.O.P. No.5195 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. and NDPS Act, Chennai - 600 104.

For Appellant : Ms.Ramya V.Rao

For Respondent : Mr.T.Chandrasekaran

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.64,000/- for the injuries sustained by him as a result of an accident caused by a bus owned by the respondent Transport Corporation as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>
Partial Loss of income	9,000
Loss of earning capacity	30,000
Medical expenses (Ex.P6)	5,000
Pain and sufferings	10,000
Loss of amenities	10,000
Total	64,000

2. The appellant / claimant has sustained fracture in his left leg and had also lost his teeth as a result of the accident caused by a bus owned by the respondent Transport Corporation. The respondent Transport Corporation has not filed any appeal and the findings of the Tribunal with regard to the negligence has now attained finality. The only question that arises for consideration is whether the appellant is entitled for enhancement of compensation or not.

3. The Doctor has assessed the disability of the appellant / claimant at 30% but the Tribunal has assessed the disability at 10% calculated at



Rs.3,000/- per percentage of disability. The Tribunal has assessed the disability of the appellant / claimant at 10%, though the private Doctor, who has issued the disability certificate for the appellant, has assessed the disability at 30% for the fracture and 6% for the teeth.

4. The appellant / claimant, being a mason and having sustained fracture of his left leg and having lost his teeth as a result of the accident caused by a bus owned by the respondent Transport Corporation, the reduction of disability of the appellant / claimant to 10% by the Tribunal is incorrect. When the Doctor has assessed the disability at 30% for the fracture and 6% for the teeth and in view of the fact that the appellant / claimant is a mason, this Court is of the considered view that the appellant's / claimant's disability if it is fixed at 20% will be a correct assessment. Therefore, the disability of the appellant / claimant erroneously fixed by the Tribunal is enhanced from 10% to 20% by this Court.

5. The accident happened in the year 2014. The Tribunal has awarded the disability compensation at Rs.3,000/- per percentage of disability, which is low, considering the year of the accident. This Court after giving due



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consideration to the year of the accident, is fixing the disability compensation at Rs.4,000/- per percentage of disability. Since this Court is assessing the disability of the appellant / claimant at 20% instead of 10% erroneously fixed by the Tribunal and this Court is also enhancing the disability compensation at Rs.4,000/- per percentage of disability instead of Rs.3,000/- per percentage of disability fixed by the Tribunal, the disability compensation is enhanced to Rs.80,000/- by this Court calculated at Rs.4,000/- for the 20% disability suffered by the appellant / claimant.

6. The Tribunal has assessed the notional monthly income of the appellant / claimant at Rs.9,000/-. The appellant / claimant was a mason. Since the accident happened in the year 2014, the assessment of the notional monthly income of the appellant / claimant by the Tribunal is a correct assessment. However, the Tribunal has awarded compensation towards loss of income to the appellant / claimant only for a period of one month, i.e., Rs.9,000/-. As a mason when he has sustained fracture and has also lost his teeth as a result of the accident caused by a bus owned by the respondent Transport Corporation, atleast for a minimum period of 2 months he would not have been in a position to do his regular employment. Therefore, this



Court enhances the compensation payable to the appellant / claimant towards loss of income at Rs.18,000/- calculated at Rs.9,000/- per month for a period of 2 months instead of Rs.9,000/- erroneously fixed by the Tribunal.

7. In so far as the compensation awarded by the Tribunal toward medical bills are concerned, which are supported by medical bills, amounting to Rs.5,000/-, there is no scope for interference by this Court as it is a just compensation.

8. In so far as the compensation awarded by the Tribunal towards pain and suffering at Rs.10,000/- the same is a just compensation as the Tribunal has given due consideration to the nature of injuries sustained by the appellant / claimant and the nature of treatment. Similarly, the Tribunal has awarded compensation of Rs.10,000/- towards loss of amenities, which is also a correct assessment made by the Tribunal. However, the Tribunal failed to award any compensation towards transportation, extra nourishment and attender charges, which the appellant / claimant is legally entitled to. This Court after giving due consideration to the nature of injuries sustained by the appellant / claimant and the nature of treatment, awarding a



compensation of Rs5,000/- each towards transportation, extra nourishment and attender charges to the appellant / claimant.

9. For the foregoing reasons, the compensation payable by the respondent Transport Corporation is re-worked in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
Partial Loss of income	9,000	18,000
Loss of earning capacity	30,000	80,000
Medical expenses (Ex.P6)	5,000	5,000
Pain and sufferings	10,000	10,000
Loss of amenities	10,000	10,000
Transportation	-	5,000
Extra Nourishment	-	5,000
Attender charges	-	5,000
Total	64,000	1,38,000

10. In the result, this Civil Miscellaneous Appeal is **partly allowed** by enhancing the award amount from **Rs.64,000/-** to **Rs.1,38,000/-**. The respondent Transport Corporation is directed to deposit the enhanced award amount of **Rs.1,38,000/-**, 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.**



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No.5195 of 2014 on the file of the **Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. and NDPS Act, Chennai - 600 104**, within a period of **four weeks** from the date of receipt of a copy of this judgment.

11. The appellant / claimant is permitted to withdraw the said amount, once it is deposited by the respondent Transport Corporation, by filing an appropriate application before the Tribunal. On such application being made, the Tribunal shall transfer the amount lying to the credit of **M.C.O.P. No.5195 of 2014** to the bank account of the appellant directly through RTGS, within a period of **one week** thereafter. No costs.

05.07.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. and NDPS Act, Chennai - 600 104.

2. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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