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C.M.A. No. 2944 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2944 of 2021

M. Nakeeran

... Appellant / Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Chennai -2.

... Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 22.01.2020 passed in M.C.O.P. No. 2462 of 2016 on the file of the Principal Special Judge, Special Court Under E.C. & NDPS Act, Motor Accident Claims Tribunal, as per G.O.(MS). No.716, Home (Tr.IV) Dept, at Chennai.

For Appellant : M/s. Amar Dineshbhai Pandiya

For Respondent : M/s. M. Murali Vinodh
(Standing Counsel for MTC)



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 2462 of 2016, dated 22.01.2020 on the file of the Principal Special Judge, Special Court Under E.C. & NDPS Act, Motor Accident Claims Tribunal, as per G.O.(MS). No.716, Home (Tr.IV) Dept, at Chennai.

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

3. On 18.02.2016, at about 14:15 hours, the claimant was riding a motor cycle bearing Registration No.TN-22-CS-5985 at Rajiv Gandhi Salai, while he reached near Aavin Milk Society, Infosys Company Junction on the Rajiv Gandhi Salai, Chennai, a MTC bus bearing Registration No.TN-01-N-7340 driven by its driver in a rash and negligent manner, hit against the claimant's motor cycle, thereby caused grievous injuries to the claimant. A criminal case was registered in Cr.No.126/S1/2016 on the file of Sub Inspector of Police, Traffic Investigation, J-3, Guindy Police Station,



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Chennai. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.12,00,000/- under section 166 of the Motor Vehicles Act.

4. The respondent - Transport Corporation has filed a counter and contended that the accident was taken place only due to the rash and negligence on the part of the claimant, who came in the opposite direction in a zig zag manner and invited the accident. The Transport Corporation disputed the nature of injuries, period of treatment and disability sustained by the claimant.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.10 were marked. On the side of the respondent, R.W.1 was examined and no exhibits were marked.

6. 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 Transport Corporation's driver is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.78,500/-



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along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

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

8. The learned counsel for the claimant submitted that the Tribunal has not awarded compensation under the head disability, even though, the claimant has suffered 35% of disability and further submitted that the Tribunal has not awarded compensation under the non-pecuniary heads and also the compensation awarded under other heads are on the lower side, hence prays to enhance the compensation.

9. The learned counsel for the Transport Corporation submitted that based on the evidence placed on record, the Tribunal has awarded a just compensation and there is no ground to enhance the same, hence prays to confirm the award.

10. Heard the submissions made on both sides and perused the



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materials placed on record:

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11. On perusal of the award, it shows that the Tribunal has awarded compensation under the heads medical expenses, pain and suffering, attender charges and loss of amenities. The major contention of the claimant is that he has sustained 35% of disability due to both bone fracture on the left leg and fracture of left ankle, the same has been proved by examining P.W.1 - Doctor, who treated him. The claimant further contended that he has undergone inpatient treatment for six days, and surgery was conducted to him for the fractures sustained by him, thereby he suffered loss of income during his disablement period but the Tribunal has not awarded compensation under the heads disability and loss of income during the treatment period. This Court is of the view that not awarding compensation for the disability sustained by the claimant and loss of income during his treatment period is not proper, hence this Court is inclined to award compensation under the above heads.

12. The evidence of P.W.2 - Doctor, who treated the claimant has clearly stated the nature of injuries sustained by the claimant and the



Ex.P.10 - disability certificate issued by the Doctor, shows that the claimant has sustained 35% disability. However, this Court is of the view considering the nature of injuries, the disability assessed by the Doctor is on the higher side and the same is hereby modified to 30% and considering the date of accident, this Court is inclined to award Rs.4,000/- per percentage of disability. Though the claimant has claimed that he worked as a Testing Engineer in M/s. HCL Company Ltd., Chennai and earning Rs.40,000/- per month but to prove the same no oral or documentary evidence were adduced, hence this Court considering the age, nature of injuries and date of accident is inclined to fix Rs.12,000/- as monthly notional income and award two months loss of income for his treatment period, accordingly, Rs.24,000/- (Rs.12,000/- X 2) is awarded under the head loss of income during the treatment period.

13. The Tribunal has awarded Rs.3,000/- as compensation under the head to and fro charges, attender charges and for consumption of nutritious food and Rs.10,000/- towards pain and suffering, considering the nature of injuries, this Court is of the view that the same are on the lower side, hence the compensation awarded under pain and suffering is modified



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to Rs.25,000/- and for to and fro charges, attender charges and for consumption of nutritious food is modified to Rs.20,000/-. The compensation awarded under other heads are concerned, the Tribunal has awarded a just compensation and the same are hereby confirmed.

14. Accordingly, the award passed by the Tribunal is 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.	Medical expenses	55,470/-	55,470/-	Confirmed
2.	To and fro expenses, attenders help, consumption of nutritious food and other miscellaneous expneses	3,000/-	20,000/-	Enhanced
3.	Pain and suffering	10,000/-	25,000/-	Enhanced
4.	Loss of amenities	10,000/-	10,000/-	Confirmed
5.	Disability @ 30%	---	1,20,000/-	Granted
6.	Loss of income during the treatment period	---	24,000/-	Granted
	Total Compensation	78,500/- (round off)	2,54,470/-	Enhanced

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.78,500/- is hereby



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enhanced to **Rs.2,54,470/- [Rupees Two Lakh Fifty Four Thousand Four**

Hundred and Seventy 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 deposit.

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.2462 of 2016 on the file

of the Principal Special Judge, Special Court Under E.C. & NDPS Act,

Motor Accidents Claims Tribunal, 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 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.

22.01.2024

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Index:Yes/No



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

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To:

1. The Principal Special Judge,
Special Court Under E.C. & NDPS Act,
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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