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C.M.A.No.3019 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04-06-2025**

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

Civil Miscellaneous Appeal No. 3019 of 2023

S. Venkatesan
S/o. Ekambaram,
No.129/70/71, Raghavan Street,
Sembium, Perambur,
Chennai-600 011

...Appellant

Versus

The Managing Director
Metropolitan Transport Corporation Limited,
Pallavan House, Anna Salai,
Chennai-600 002.

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 25.11.2022 in M.C.O.P.No.6448 of 2019 on the file of the Motor Accident Claims Tribunal/IV Small Causes Court, Chennai.

For Appellant : Mrs. Saleem Fathima P.T.

For Respondent : Mr.M. Murali Vinodh



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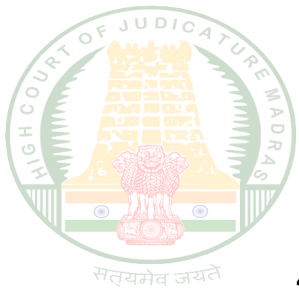
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JUDGMENT

This Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 25.11.2022 made in M.C.O.P.No. 6448 of 2019 on the file of the Motor Accident Claims Tribunal/IV Small Causes Court, Chennai.

2. The appellant is a claimant in M.C.O.P.No.6448 of 2019 on the file of Motor Accident Claims Tribunal/IV Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.11.2019.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Metropolitan Transport Corporation bus bearing Registration No. TN-01-AN-2795.



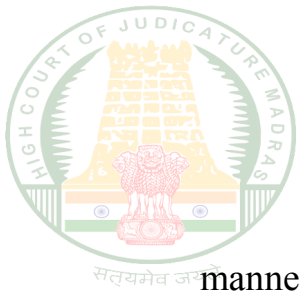
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4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant was working in a private company as “Project Manager”, to that effect, he has also produced his ID card and pay slip as Ex.P5 and Ex.P6. But the Tribunal, while awarding the loss of income, has not awarded any compensation for the loss of income and as well as disability has also not been considered. The Tribunal has fixed the disability at 5% without considering the fact that the accident happened in the year 2019. Therefore, disability percentage has also been erroneously fixed by the Tribunal at 5% instead of 25%. He further contended that the pain and sufferings has not been properly awarded by the Tribunal.

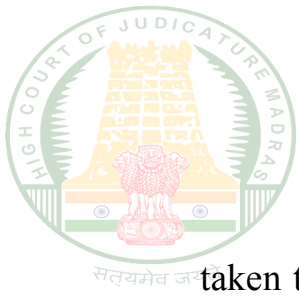
6. He further contended that on 26.11.2019, when the petitioner was riding his motorcycle bearing Registration No.TN-05-BQ-1215 at Mathiya Kailas Signal, S.P.Road, Kotturpuram, Chennai, at that time a MTC bus bearing Registration No. TN-01-AN-2795, driven in a rash and negligent



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manner, hit behind the petitioner's motorcycle. Due to the accident, the petitioner sustained left ankle medial malleolus fracture and left shoulder joint effusion with marrow and rotator cuff edema. The petitioner examined the doctor as P.W.2, who has assessed the disability of the petitioner as 25% and marked the disability certificate as Ex.P12 to prove the injuries. The Tribunal awarded only a meager sum of Rs.25,000/- towards disability at the rate of Rs.5,000/- for 1% of disability, and thus, a sum of Rs.25,000/- was awarded for 5% disability. The Tribunal has fixed the disability at 5% per percentage without considering the fact that the accident happened in the year 2019. Therefore, the disability of the petitioner has been erroneously fixed by the Tribunal. The Tribunal ought to have taken 25% disability and awarded a sum of Rs.5,000/- per percentage of disability. Due to the injuries and disability, the petitioner could not do the work as he was doing earlier. The Tribunal has also not awarded any compensation towards loss of pain and suffering. The Tribunal ought to have fixed the disability of the petitioner as 100% and ought to have awarded compensation towards loss of disability and pain & sufferings. The petitioner was earning a sum of Rs.34,000/- per month by working as "Project Manager" in a private company. The petitioner has



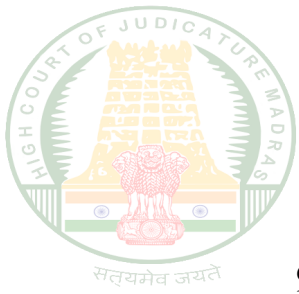
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taken treatment as in-patient in V.H.S.Hospital, Chennai and other private hospitals in Chennai. He marked the discharge summary as Ex.P3 to prove the same. The Tribunal has not awarded any compensation towards attendant charges and future medical expenses. The amounts awarded by the Tribunal under different heads are meager and therefore, prayed for enhancement of compensation.

7. *Per contra*, the learned counsel appearing for the respondent/Metropolitan Transport Corporation contended that the petitioner was admitted only for three days as in-patient in the hospital and therefore, the Tribunal has not awarded towards loss of income. Therefore, the Tribunal has rightly fixed 5% disability, and awarded Rs.5,000/- for each percentage by relying the medical board certificate, which needs no interference. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent/Metropolitan Transport Corporation and perused all the materials available on record.



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9. It is the contention of the appellant that in the accident, the appellant sustained left ankle medial malleolus fracture and left shoulder joint effusion with marrow and rotator cuff edema. The appellant examined Dr.Saravanabhavanantham as P.W.2, who assessed the disability of the appellant as 25% and issued the disability certificate - Ex.P12 to prove the injuries. The Tribunal, accepting the same, had awarded a sum of Rs.25,000/- (Rs.5,000/- X 5%) towards disability at the rate of Rs.5,000/- per percentage of disability. The appellant was working in a private company as “Project Manager” to that effect, he has also produced his ID card and pay slip as Ex.P5 and Ex.P6. The accident is of the year 2019, but the amount awarded by the Tribunal at a sum of Rs.5,000/- per percentage of disability is not correct.

10. According to the appellant, he was drawing salary of Rs.35,000/- per month but the Tribunal has fixed the loss of income observing that he was less than one week in the hospital, but, on seeing the injuries sustained by him as per Ex.P3-discharge summary the appellant had sustained “left ankle medial malleolus fracture and left shoulder joint effusion with marrow and rotator cuff edema”. Though he was discharged

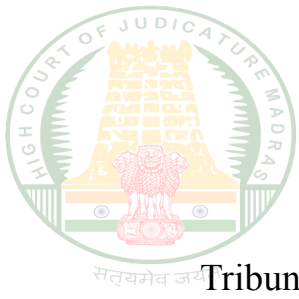


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from the hospital, he would have attended the office for two months since he was unable to drive two wheeler. Therefore this Court is inclined to fix two months (2) period and his monthly income fixed at Rs.30,000/- per month. Accordingly, this Court fixed the loss of income Rs.30,000/- p.m. X 2 months period = Rs.60,000/-. The PW2-Doctor issued disability certificate against the petitioner as 25% permanent disability and the same was rightly considered by the Tribunal. Though the appellant claimed 25%, but the PW2-Doctor who issued the disability certificate was not considered as in-patient the appellant. Therefore, the Tribunal taken into consideration only 5%, but the accident happened in the year 2019. Therefore, the Tribunal ought to have awarded a sum of Rs.7,000/- per percentage, but the Tribunal has erroneously fixed at the rate of Rs.5,000/- per percentage disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.35,000/- (Rs.7,000/- X 5%).

11(i). According to the appellant, he was earning a sum of Rs.34,000/- per month by working as Project Manager in a private company. He failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the

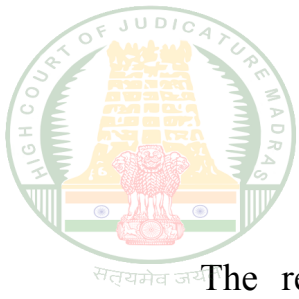


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Tribunal fixed a sum of Rs.34,000/- as monthly income of the appellant and awarded a sum of Rs.35,000/- (Rs.5,000/- X 7%) towards loss of income for two months. The accident is of the year 2019 and the monthly income fixed by the Tribunal is meager. Hence, a sum of Rs.35,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant, he would not have attended his work at least for two months. Thus, a sum of Rs.60,000/- (Rs.30,000/- X 2) is awarded towards loss of income for six months.

11(ii). The appellant contended that he has taken treatment as in-patient for three days from 26.11.2019 to 28.11.2019. He marked the discharge summary as Ex.P3 to prove the same. The Tribunal has not awarded any compensation towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.5,000/- awarded by the Tribunal towards pain and sufferings is enhanced to Rs.50,000/-, a sum of Rs.10,000/- awarded by the Tribunal towards extra nourishment is enhanced to Rs.50,000/- and no amount has been awarded by the Tribunal towards Loss of Income. Considering the nature of injuries, a sum of (Rs.30,000 X 2) = Rs.60,000/- is enhanced.



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The rest of the compensation awarded by the Tribunal is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	25,000	35,000	Enhanced
2.	Medical Expenses	22,936	22,936	Confirmed
3.	Loss of Income	Nil	60,000	Enhanced
4.	Pain and Suffering	5,000	50,000	Enhanced
5.	Transportation Expenses	5,000	5,000	Confirmed
6.	Nutrition Expenses	5,000	10,000	Enhanced
7.	Damages to clothes	2,000	2,000	Confirmed
8.	Loss of amenities	5,000	5,000	Confirmed
	Total	69,936	1,89,936	Enhanced by Rs.1,20,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.69,936/- is hereby enhanced by Rs.1,20,000/- together with interest at the rate of 7.5% per



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annum from the date of petition till the date of realization. The appellant is

directed to pay necessary Court fee, if any, on the enhanced compensation.

The respondent/Metropolitan Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.

On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

04.06.2025

MSM

To

The Motor Accident Claims Tribunal
IV Small Causes Court,
Chennai.



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T.V.THAMILSELVI, J

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