



C.M.A.No.2238 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2238 of 2022

Nagarajan

..Appellant

Vs

The Managing Director,
The Tamilnadu State Transport Corporation,
Villupuram Division,
Villupuram.

..Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in MCOP.No.49 of 2010 dated 10.07.2012 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Villupuram.

For Appellant : Mrs.S.Geetha

For Respondent : Mr.S.Shantha Kumar

JUDGMENT



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This Civil Miscellaneous appeal has been filed by the appellant, challenging the quantum of the compensation awarded by the Motor Accident Claims Tribunal/II Additional Subordinate Judge, Villupuram vide judgment dated dated 10.07.2012 in MCOP.No.49 of 2010.

2. The brief facts of the case are that on 14.10.2009, when the claimant was getting into the respondent's vehicle bearing Registration No.TN-32-N-2689, the driver of the vehicle drove it in a rash and negligent manner, by which, the claimant fell down from the bus and the wheels of the bus ran over the left leg of the claimant. Due to the said accident, the claimant sustained grievous injuries including fracture on his left leg and later the left leg was amputated. Considering the claim petition, the Tribunal has awarded the compensation under the following heads::

<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
1	Loss of Income	6,000
2	Medical Expenses	14,300
3	Pain and Sufferings	25,000
4	Transport Expenses	2,000
5	Extra Nourishment	10,000
6	Attendant charges	10,000



<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
7	Loss of earning power due to disability	2,01,600/-
	Total	2,68,900/-

3.The learned counsel for the appellant submits that at the time of accident, the claimant was aged about 60 years and he was doing real estate business and earning for about Rs.20,000/- per month. However, the Tribunal has fixed his monthly income at Rs.3,000/- per month which is very meagre.

4. He would also submit that the claimant had sustained severe fracture on his left leg, due to which, he was not able to do day- to- day activities. Further, though the Medical Board had assessed the disability of the injured at 70%, the Tribunal has taken it only as 25% towards functional disability and awarded the compensation by applying multiplier method, which is on the lower side. Hence, he requests this Court to enhance the same.

5. The learned counsel for the appellant would submit that, at the time of accident which occurred in the year 2009, the claimant/appellant was aged about 60 years and doing real estate business and earning a sum of Rs.20,000/- per



month. However, without considering the same, the Tribunal has erroneously fixed the notional monthly income of the appellant at Rs.3,000/-, which is very meagre and the same needs to be modified by this Court. Further, he relied upon the decision in the case of *Syed Sadiq Vs. United India Insurance Company*, reported in **2014 (1) TNMAC 459 (SC)**, wherein the Hon'ble Apex Court fixed the notional monthly income even for a vegetable vendor at Rs.6,500/-, who sustained injuries in the accident occurred in the year 2008. Therefore, the learned counsel would urge this Court to enhance the notional income of the appellant and award just and fair compensation. The learned counsel also submits that the Tribunal has awarded only Rs.2,000/- towards transportation expenses, which requires to be enhanced. He further submits that no amount has been awarded towards future medical expenses since the claimant has to replace the artificial limb periodically, he would urge this Court to grant fair compensation under this head.

6. In reply, the learned counsel appearing for the respondent would submit that considering the year of accident and nature of avocation, the Tribunal has rightly awarded the compensation, which requires no interference and hence, he requests this Court to confirm the same.



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7. Heard the learned counsel for the appellant and the respondent and also perused the materials available on record.

8. In the present case, the accident had occurred in the year 2009 and at the time of accident, the claimant/appellant was aged about 60 years and earning Rs.20,000/- by doing Real Estate business. However, after taking into consideration the year of accident and the age of the petitioner, this Court feels it appropriate to enhance the notional income of the claimant. There is no dispute with regard to the factum of accident but the issue is only with regard to the determination of 'loss of earning power due to disability' and also to consider the compensation awarded under other heads. In the case on hand, the Tribunal has fixed the monthly notional income at about Rs.3000/- and awarded Rs.6000/- towards the loss of income of the claimant.

9. In the present case, as far as compensation awarded towards disability is concerned, the Tribunal fixed the disability for amputation below knee at 50% and 20% for loss of all toes of one foot as per guideline issued in the First Schedule of Motor Vehicles Act and thereby, the total percentage of disability of



the appellant was assessed and fixed at 70%. According to the appellant, at time of accident, the appellant was aged about 60 years and earning Rs.20,000/- per month by doing real estate business. But there is no documentary evidence was let in by the appellant in this regard. Therefore, following the dictum of the Hon'ble Supreme Court in '*Syed Sadiq*'s case (cited supra) and taking note of the fact that the accident occurred in the year 2009, this Court feels that it would be appropriate to enhance and fix the monthly notional income of the appellant at Rs.7,000/- and adding future prospects at 10%, the total monthly notional income of the appellant would be at Rs.7700/- per month. Accordingly, by applying multiplier 9 and taking entire disability as functional disability at 70%, the loss of earning due to disability, would be determined as follows:

$$\text{Rs.7700 (notional income)} \times 70/100 \text{ (disability)} \times 9 \text{ (Multiplier)} \times 12 \text{ (months)} = \text{Rs.5,82,120/-}.$$

10.Further, the loss of income during treatment period of two months is enhanced to Rs.14,000/- from Rs. 6000/-. Likewise, the transport charges and attendant charges are enhanced to Rs.10,000/- & Rs.30000/- from Rs.2000/- & Rs.10,000/-. However, the compensation awarded under the heads of Pain and sufferings at Rs.25,000/- and extra nourishment of Rs.10000/- are just and reasonable and the same stand confirmed. Since no amount was awarded

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towards future medical expenses to the appellant, who fixed artificial limb and used to change the same periodically, this Court feels it appropriate to award Rs.50,000/- towards the same.

11. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No</i>	<i>Particulars</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Loss of Income	6000	14,000
2	Medical Expenses	14,300	14300
3	Pain and Sufferings	25,000	25,000
4	Transport Expenses	2,000	10,000
5	Extra Nourishment	10000	10,000
6	Future Medical Expenses	Nil	50,000
7	Attendant charges	10000	30,000
8	Loss of earning power due to disability	2,01,600	5,82,120
	Total	2,68,900/-	7,35,420/-

12. In the light of the above, the total compensation amount of Rs.2,68,900/- awarded by the Tribunal is hereby modified and enhanced to Rs.7,35,420/-.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the



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respondent Corporation is directed to deposit the entire amount awarded by this Court along with interest at the rate of 7.5 % p.a., and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any, to the credit of MCOP.No.49 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Villupuram. Further, the claimant shall pay necessary Court fee, if any, on the enhanced compensation. Thereafter, the Tribunal is directed to immediately transfer the entire amount to the bank accounts of the claimant by way of RTGS, within a period of 3 weeks from the date of deposit and from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is earlier. No costs.

14.The learned counsel for the respondent would submit that there was a delay in representing the appeal, for which, the respondent is not liable to pay the interest on the enhanced amount of compensation. The learned counsel for the appellant would submit that since the matter has been referred to mediation and there the delay had occurred. However, the respondent cannot be blamed for the delay and accordingly, the respondent is not liable to pay the interest on the



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enhanced compensation towards the delayed period.

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Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
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To:
The Motor Accident Claims Tribunal,
II Additional Subordinate Judge, Villupuram.



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KRISHNAN RAMASAMY,J.

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