IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

C.M.A.No.1479 of 2008
and
M.P.No.1 of 2008

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division-I,
Villupuram ... Appellant/Respondent

.Vs.

Ramalingam ... Respondent/Claimant

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 18.08.2007 made in MCOP No.813 of 2006 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruvannamalai.

For Appellant : Mr. V.Ramesh

For Respondent : Mr. B.Jawahar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Transport Corporation, challenging the quantum of compensation.

2. The claimant / respondent, Ramalingam, aged 48 years, a Waiter by avocation, earning a sum of Rs.3,000/- per month, met with an accident on 02.12.2005. In respect of the injuries sustained and amputation of his right leg (above knee), he claimed a compensation of Rs.5,00,000/- against the appellant herein / Transport Corporation in MCOP No.813 of 2006 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruvannamalai.

3. As against the claim made for a sum of Rs.5,00,000/-, the Tribunal, on a consideration of the materials placed before it, has quantified the compensation at Rs.2,45,000/- and the breakup details are as follows:-

Loss of dependency	-	Rs.1,95,000/-
Pain and sufferings	-	Rs. 10,000/-
Transport & Medical expenses	-	Rs. 10,000/-
Attendant charges	-	Rs. 5,000/-
Special damage	-	Rs. 25,000/-
		Rs.2,45,000/-

4. Challenging the quantum as exorbitant, having regard to the percentage of disability sustained, the Transport Corporation has challenged the award.

5. The contention of the learned counsel for the appellant / Transport Corporation is that the Tribunal ought not to have adopted the multiplier method, when the disability is neither total nor permanent. He would further contend that the sum of Rs.25,000/- awarded under the head 'special damage' is not in accordance with law and therefore submitted that the amount awarded under that head is excessive.

6. Per contra, the learned counsel appearing for the claimant / respondent herein contended that when the claimant has suffered amputation on the right leg, below knee, he will not be able to continue his avocation as before and therefore it should be construed as the case of total loss of earning capacity. The learned counsel appearing for the respondent further submitted that even for determining just and fair compensation in the case of injury/permanent disablement, the tribunal/courts are free to apply multiplier method for which he relied on a decision of the Madras High Court in United India Insurance Co. Ltd. vs. Veluchamy and Anr. 2005 (1) CTC 38. The learned counsel further submitted that the total compensation awarded by the Tribunal, under various heads, including the Special Damages, is fairly reasonable and therefore, the same do not require any interference.

7. This Court has considered the submissions made by the learned counsel for both sides and perused the materials available on record.

8. As far as the first contention of the learned counsel for the appellant that the annual income taken at Rs.30,000/- by the Claims Tribunal is excessive and it should have been much less is concerned, it is to be pointed out that according to the averments made in the claim petition, the injured was working as a Waiter in an hotel and he has been earning a sum of Rs.3,000/- per month. Thus, the annual income, according to this calculation, comes to Rs.36,000/- per month. But the Tribunal has taken the income only at Rs.30,000/- per month. Further, while looking into the nature of the disability and the nature of the impact of disability upon the earning capacity of the injured, according to the medical records and as observed by the Tribunal, there had been amputation in the right leg, below knee. Therefore, it is clear that the injured will be having difficulty in sitting over cross legs. Long hours of standing, which would cause pain, is bound to reflect upon the capacity to earn as Waiter. According to Doctor, as per Ex.P-5, the disability has been assessed at 30%.

9. Further, in the decision reported in 2005 (1) CTC 38 (referred to supra), which was relied upon by the learned counsel for the respondent, it is crystal clear that though multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power, depending on various factors such as nature and extent of disablement, avocation of the injured whether it would affect his or her employment or earning power, the loss of income or earnings may be ascertained by applying the same as provided under the second Schedule to the Act. Therefore, the annual income taken at Rs.30,000/- by the Tribunal, in the case on hand, cannot be said to be excessive. Hence the amount of Rs.1,95,000/- awarded under the head 'Loss of Earning Capacity' cannot also be said to be excessive.

10. So far as the other contention raised by the learned counsel for the appellant with regard to the award under the head 'special damages' at Rs.25,000/- is concerned, it is to be pointed out that it is the bounden duty of the respondent / injured to establish that he is to be compensated for his inability to lead a full life, i.e., his inability to enjoy those normal amenities, which he would have enjoyed and but for the injuries and his inability to earn as much as he used to earn or could have earned. But, admittedly, in the case on hand, there is no such ground raised or established by the

respondent / claimant / injured. Therefore, the sum of Rs.25,000/- awarded by the Tribunal under the head 'special damages' ought not to have been awarded by the Tribunal and therefore, the same is deleted.

11. But, at the same time, this Court is of the opinion that the amount awarded under the head 'pain and sufferings' at Rs.10,000/- is on the lower side, since the injured was in hospital for more than one month. Considering the said fact, the said sum is enhanced to Rs.20,000/- under that head.

12. Since the amount awarded by the Tribunal under other heads are not seriously disputed by the learned counsel for the appellant, the same are confirmed.

13. In the result, this Civil Miscellaneous Appeal is partly-allowed, by reducing the total amount of compensation awarded by the Tribunal from Rs.2,45,000/- to Rs.2,30,000/-, which will carry interest at 7.5% per annum from the date of petition till the date of deposit. It is represented by the learned counsel for the appellant that the Transport Corporation / appellant has already deposited 50% of the amount as ordered by the Tribunal with proportionate interest. Therefore, the Appellant / Transport Corporation shall deposit the modified award amount of Rs.2,45,000/- along with interest at the rate of 7.5% per annum, less the amount already deposited, from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant / respondent herein is permitted to withdraw the entire award amount with accrued interest, less the amount already withdrawn, if any. There will be no order as to costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Motor Accident Claims Tribunal
   (Principal Sub Judge),
   Tiruvannamalai.

2. The Section Officer,
   V.R.Section,
   High Court, Madras

+1cc to Mr.B.Jawahar, Advocate, S.R.No.52249

C.M.A.No.1479 of 2008
and
M.P.No.1 of 2008

SVI(CO)
CA(26/10/2015)