

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2014

CORAM

THE HONOURABLE MR. **JUSTICE R.SUBBIAH**

C.M.A.No.2788 of 2014

V.Mariappan

... Appellant / Petitioner

vs.

1.A.M.Sakthivel

2.The Managing Director,
The Tamil Nadu State Transport Co.Ltd.,
Kovai Division – II,
Chennimalai Road,
Erode.

... Respondents / Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 15.10.2004 made in MCOP No.282 of 2003 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Erode.

For appellant : Mr.N.Manokaran

For respondents : Mr.S.S.Swaminathan
for R.2

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Erode, in and by an award dated 15.10.2004 made in M.C.O.P.No.282 of 2003, the present appeal has been filed for enhancement of compensation amount by the appellant/claimant.

2. Since the appeal has been filed only for enhancing the quantum of compensation awarded by the Tribunal, I am not dealing with the other aspects of the award.

3. The appellant is the claimant before the Tribunal. It is the case of the claimant before the Tribunal that on account of the accident he had sustained crush injury on his left leg and as such his left leg below the knee was amputated. At the time of accident, he was working as a dyeing master in M/s.Athi Kiriyesans Dying Factory and earning a sum of Rs.10,000/- per month. Since his left leg below the knee was amputated, he was not in a position to continue his job. Thus, he made a claim for a sum of Rs.5,00,000/- as compensation.

4. In order to prove the disability suffered by the victim, he examined himself as P.W.1 besides examining three more witnesses, viz one Govindaraj as P.W.2, doctor Venkatesan as P.W.3 and one Sampath as P.W.4 and marked 16 documents as Exs.P.1 to P.16. On the side of the transport corporation, one A.M.Sakthivel was examined as R.W.1. P.W.3, doctor had spoken about the disability suffered by the victim. He has stated in his evidence that the disability suffered by the victim is 50%.

5. The Tribunal, by analysing the entire evidence placed before it, both oral and documentary, has fixed the disability suffered by the victim as 50% and passed an award for a sum of Rs.1,80,000/- The break-up details of the compensation awarded by the tribunal is as follows -

1. Medical expenses	...	Rs. 25,000/-
2. Permanent disability	...	Rs. 50,000/-
3. Loss of income	...	Rs. 10,000/-
4. Loss of earning capacity		Rs. 50,000/-
5. Pain & Sufferings	...	Rs. 40,000/-
6. Transportation	...	Rs. 5,000/-

Total	...	Rs.1,80,000/-
		=====

Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has preferred the present appeal for enhancement of compensation.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent/transport corporation.

7. It is the main submission of the learned counsel appearing for the appellant/claimant that on account of the accident, his left leg below the knee was amputated and the doctor has assessed the disability as 50%. Under such circumstances, the Tribunal ought to have made the calculation by applying multiplier method to arrive at a compensation under the head permanent disability. Instead of calculating so, the Tribunal has awarded only a consolidated sum of Rs.50,000/- as compensation under the head loss of earning capacity. Hence, the amount awarded by the Tribunal under the head loss of earning capacity has to be enhanced by way of re-calculation. Further, the learned counsel for the appellant/claimant submitted that the amount awarded under the others heads also cannot be said to be an adequate compensation and hence proper enhancement has to be made in respect of the amount awarded under other heads also.

8. Per contra, the learned counsel appearing for the second respondent/transport corporation submitted his arguments supporting the award of the Tribunal.

9. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record and I find that on account of the accident, the left leg below the knee of the victim was amputated. The disability suffered by the victim is a total permanent disability and under such circumstances, as contended by the learned counsel for the appellant/claimant, the tribunal ought to have awarded the compensation amount under the head loss of earning capacity by applying multiplier method. Hence, in my considered opinion, a sum of Rs.50,000/- awarded by the tribunal under the head loss of earning capacity needs to be enhanced by applying multiplier method. The appellant/claimant was working as a dyeing master and earning a sum of Rs.10,000/- per month. Though it is the case of the appellant/claimant that he was earning a sum of Rs.10,000/- per month, no tangible evidence was produced to prove his monthly income.

10. Hence, considering the facts and circumstances of the case, by taking the monthly income as Rs.4,500/- and after adding 30% towards future prospects and by applying multiplier 13, the amount of Rs.50,000/- awarded for 50% disability under the head permanent disability is hereby enhanced to Rs.3,15,900/- [$\text{Rs.}3,500 \times 30/100 \times 12 \times 13 \times 50\%$]. Further, I find that the Tribunal has not awarded any amount under the head loss of amenities. Considering the fact that the victim would find it difficult to continue his normal avocation as he was doing before the accident, a sum of Rs.50,000/- is hereby awarded under the head loss of amenities. Further, considering the nature of injuries sustained by the appellant/claimant and long duration of treatment undergone by the victim, I am of the opinion that the amount of Rs.5,000/- awarded under the head transportation expenses is on the lower side and hence the same is hereby enhanced to Rs.10,000/-. Except the above modification, the amount awarded by the tribunal stands confirmed. Accordingly, the break-up details of the enhanced amount are as follows:-

1. Permanent disability and future prospects	...	Rs.3,15,900/-
2. Pain & Sufferings	...	Rs. 40,000/-
3. Medical expenses	...	Rs. 25,000/-

4. Loss of income	...	Rs. 10,000/-
5. Loss of Amenities	...	Rs. 50,000/-
6. Loss of earning capacity	...	Rs. 50,000/-
7. Transportation	...	Rs. 10,000/-

Total	...	Rs.5,00,900/-
		=====

Rounded off to Rs.5,00,000/-

11. But, I find that the appellant/claimant has filed the appeal only for Rs.1,00,000/-. However, I am of the opinion that considering the facts and circumstances of the case, awarding a sum of Rs.5,00,000/- as compensation would be just and proper. In the result, the amount awarded by the Tribunal is hereby enhanced to Rs.5,00,000/- and the civil miscellaneous appeal is allowed. No costs.

12. The appellant/claimant is directed to pay the court fee, as per rules for the enhanced compensation amount more than of Rs.1,00,000/-, before receiving the order copy. The Registry is directed to work out the Court fee and on payment of the requisite Court fee, the decree shall accordingly be drafted.

13. In view of the above enhancement of the award, the second respondent/transport corporation is directed to deposit the enhanced compensation amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the amount alongwith interest.

12.08.2014

Index :Yes/No
rgr

To

- 1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.
- 2.The Record Keeper,
V.R. Records,
High Court of Madras.

R.SUBBIAH, J.

rgr

C.M.A.No.2788 of 2005

12.08.2014