

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2016

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2288 of 2009

Veeran

... Appellant/Claimant

Vs

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Salem Division-I, 12, Ramakrishna Road,
Salem - 7. ... Respondent/Respondent

Prayer:- Appeal filed under Section 173 of Motor Vehicles Act against the decree and judgment and decree dated 31.10.2008 made in MACTOP.No.198 of 2007 on the file of the Motor Accidents Claims Tribunal, (Principal Subordiante Judge), Salem.

For Appellant : Mr.K.Kuppuswamy

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The appeal is preferred by the claimant not satisfied with the compensation awarded by the Motor Accidents Claims Tribunal, Principal Subordiante Judge, Salem.

2. In the claim application filed before the Tribunal, the claimant has stated that on 31.12.2006 around 9.15p.m., when he was walking on Old bus stand road in Allkollipalam, the respondent vehicle bearing registration No.TN-27-N-1376, came in a rash and negligent manner and dashed against him and thereby, the claimant fell down on the road and sustained grievous injuries. The claimant filed a claim petition seeking a sum of Rs.10,00,000/- as compensation and the said claim was resisted by the respondent/Metropolitan Transport Corporation. According to the claimant, due to the accident, his left hand was amputated and he was not able to do his work as before. The claimant is a coolie by profession and because of the accident, he lost his earning capacity and he was aged about 37 years at the time of the accident. However, the Tribunal found that the accident had occurred due to the rash and negligent driving of the driver of the Respondent Corporation and fastened the liability on the respondent.

3. While computing compensation, the Tribunal fixed the notional monthly income of the claimant at Rs.3,000/- per month and by applying multiplier of '16' for the disability at 50%, calculated a sum of Rs.2,88,000/- for pecuniary loss and awarded a sum of Rs.20,000/- towards pain and sufferings, Rs.10,000/- towards nutrition, Rs.5,000/- towards transport expenses and a sum of Rs.20,000/- for loss of dependency; in toto a sum of Rs.3,53,000/- with 7.5% interest was awarded.

4. Mr.K.Kuppuswamy, learned counsel appearing for the appellant submits that the claimant had sustained grievous injuries and his left hand was amputated; since he is a coolie, he is not able to do his work as before and the tribunal had not granted any amount for loss of income during the period of treatment and the amount granted under the head pain and sufferings and disability are very low though the claimant's left hand was amputated. It is his further contention that the claimant was unmarried at the time of accident and no amount had been granted towards future prospects. Hence, seeks enhancement of compensation.

5. Per Contra, Mr.D.Venkatachalam, learned counsel appearing for the respondent submits that there is no income proof, therefore, the Tribunal is correct in granting a reasonable compensation.

6. I have heard both sides and perused the materials available on record.

7. The factum and manner of the accident is not in dispute and the quantum is the only question before this Court. As rightly contented by the learned counsel for the appellant, the Tribunal has not taken into consideration the notional income of the deceased. Hence, I find it could be just and reasonable to fix the notional income at Rs.3,000/-per month. Since the claimant's left hand is amputated and he is coolie by profession, I am of the view that the disability suffered has to be construed as functional disability and hence, the appellant's disability is fixed at 100%. Also, the correct multiplier to be adopted in this case is '15' as per the ratio laid down in Sarala Varma's case.

8. In view of the above, taking the monthly income of the claimant at Rs.3,000/-, applying the multiplier of '15' and fixing the functional disability of the claimant at Rs.100/-, the compensation towards pecuniary loss is arrived at a sum of Rs.5,40,000/- (Rs.3,000/- x 12 x 15 x 100%). In view of the injuries sustained by the claimant, I find that the compensation awarded under other heads, viz., pain and suffering, nutritions and Transport expenses are just and reasonable and they are

accordingly confirmed. Since enough compensation is awarded under the head 'loss of earning capacity', the compensation awarded towards 'dependency and others: in a sum of Rs.20,000/- is struck down.

9. In fine, the award passed by the Tribunal is enhanced and details of the enhanced award are thus:

Loss of earning capacity	Rs.5,40,000/-
Pain and Suffering	Rs. 20,000/-
Nutrition	Rs. 10,000/-
Transport	Rs. 5,000/-

	Rs.5,75,000/-

Thus, the appellant/claimant is entitled to a sum of Rs.5,75,000/- (Rupees Five Lakhs Seventy Five Thousand Only) as revised compensation.

10. In the result, this appeal is allowed. The respondent/Transport Corporation is directed to deposit the entire compensation if not already deposited as per the order of the Tribunal, along with enhanced compensation as fixed by this Court, with interest @ 7.5% per annum, from the date of petition till the date of deposit, within a period of four (4) weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same along with interest by filing proper application before the Court below. The appellant/claimant is also directed to pay the additional court fee for the enhanced compensation as per rules. It is made clear that the guidelines given by this Court in C.M.A.No.428 of 2016 should be strictly followed. No costs.

Sd/-

Asst.Registrar (CS IV)

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Sub Asst. Registrar

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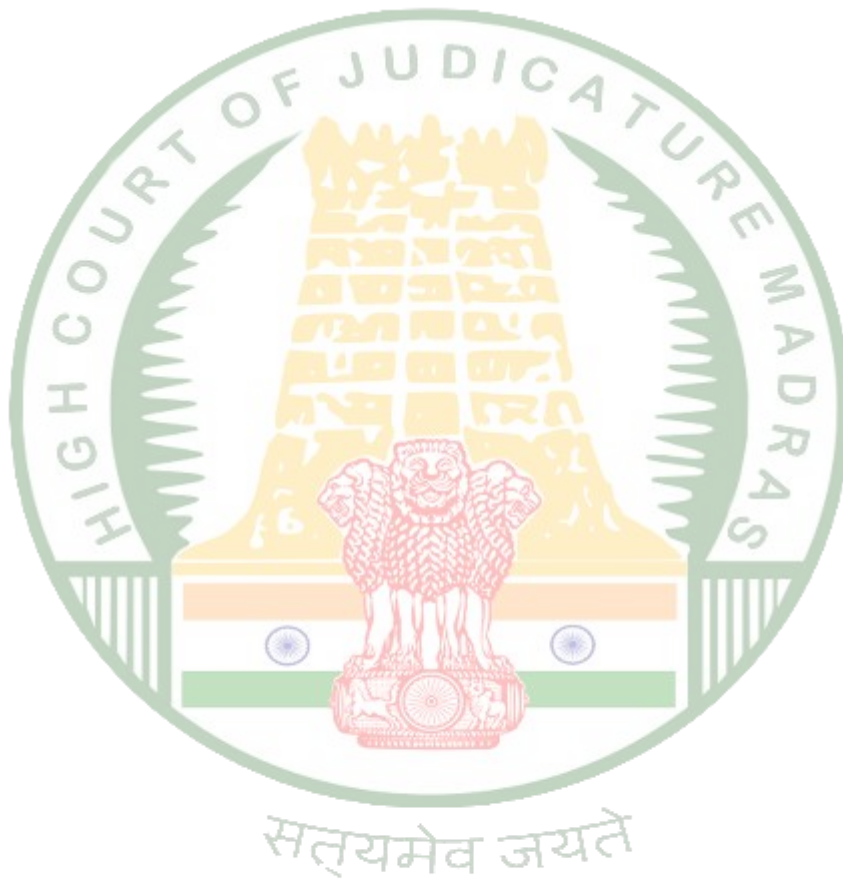
1. The Motor Accidents Claims Tribunal
Principal Subordiante Judge, Salem.

2. The Section Officer
VR Section,
High Court, Madras

1 cc to Mr.D. Venkatachalam, Advocate, Sr. 26518
1 cc to Mr.K. Kuppusamy, Advocate, Sr. 27025

C.M.A.No.2288 of 2009

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