

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.Nos.1767 of 1998 and 157 of 1999

C.M.A.No. 1767 of 1998

B.George David ... Appellant /Petitioner in MCOP
No.2415 of 1995

Vs.

Metropolitan Transport Corporation Limited,
Represented by its Managing Director,
Ayyanavaram,
Chennai-600 023.

... Respondent/Respondent
in MCOP No.2415 of 95

(Amended the name of the
respondent vide order
dated 18.09.2002 in
C.M.P.No.9588 of 2002 by
NVBJ & CNJ)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the Judgment and Decree
dated 30.06.1998 made in M.A.C.T.O.P.No.2415 of 1995 on the file
of the Motor Accident Claims Tribunal (II Judge, Small Causes
Court), Chennai.

For Appellant : Ms.Saleem Fathima
for M/s.M.Swamikannu

For Respondent : Mr.S.Sivakumar

C.M.A.No.157 of 1999

Metropolitan Transport Corporation Limited,
Represented by its Managing Director,
Ayyanavaram,
Chennai-600 023.

(C.T. Accepted vide order dated
04.02.1999 in C.M.P.No.1536/99 (DR)

.. Appellant /Respondent
in MCOP No.2415 of 1995

Vs.

B.George David

.. Respondent /Petitioner
in MCOP No.2415 of 95

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.06.1998 made in M.C.O.P.No.2415 of 1995 on the file of the Motor Accident Claims Tribunal (II Judge, Small Causes Court), Chennai.

For Appellant : Mr.S.Sivakumar

For Respondent: Ms.Saleem Fathima
for Mr.M.Swamikannu

COMMON JUDGMENT

These two appeals are taken up by this Court on remand by the Hon'ble Supreme Court vide its batch of order dated 24.09.2013.

2. The brief facts which are necessary to consider these appeals are: The claimant, while travelling in a bike bearing No.TMZ-3096 suffered injury when a bus owned by the respondent collided with the bike due to the negligent driving of the bus. In the said accident, the claimant suffered major and serious injuries due to which he was said to have suffered compound and communicated fractures in right hand fore-arm, right clavicle bone and right leg knee and below knee. Severe injury in head and face. Severe injury in right side of the body. Multiple internal and external injuries all over the body. Seeking compensation, he moved the Tribunal with a claim of Rs.6,00,000/- and was awarded Rs.2,19,196/- fastening the liability on the Transport Corporation. Challenging the said award as inadequate, the Claimant has preferred an appeal and challenging the award as exorbitant, the Transport Corporation has preferred a separate appeal and both the appeals were jointly disposed of by this Court on 21.09.2006, whereunder, the total compensation was reduced from Rs.2,19,196/- to Rs.1,92,196/-. In its order, this Court has reduced the compensation awarded by the Tribunal under the head of loss of

earning power from Rs.27,000/- to nil. The award passed by this Court was challenged by the claimant before the Hon'ble Supreme Court and this was taken along with a batch of other similar cases in Alexander Anand Kumar v. Divisional Engineer (H) [Civil Appeal No.8639 of 2013] and was disposed of by a common order. In its order, the Hon'ble Supreme Court has observed as under:

'2. Learned counsel appearing for the appellant/claimant brings to our notice a judgment of this Court in the case of K.Suresh vs. New India Assurance Company Limited & Anr., reported in (2012) 12 SCC 274. In the said decision, this Court has categorically held that the compensation can be payable both for loss of earning capacity as well as disability suffered by the claimant.

3. In our considered opinion, the view taken by the High Court is contrary to the observations made by this Court in the case of K.Suresh (supra). In view of the above, the impugned judgment and order passed by the High Court cannot be sustained and the same is liable to be set aside.

4. Accordingly, we allow this appeal and set aside the impugned judgment and order passed by the High Court. We remand the matter back to the High Court to consider and decide the appeal filed by the Appellant/Claimant keeping in view the observations made by this Court in the case of K.Suresh (supra).'

This is how the matter has come to this Court.

3. A careful reading of the judgment of the Hon'ble Supreme Court as extracted above indicate that it has directed this Court to follow the principles observed in K.Suresh vs. New India Assurance Company Limited & Anr., [(2012) 12 SCC 274=2012 ACJ 2694].

4. In K.Suresh vs. New India Assurance Company Limited & Anr., the Hon'ble Supreme Court has exclusively relied on the principles laid down in Raj Kumar Vs Ajay Kumar and another [2011 ACJ 1] and has distinguished the permanent disability caused due to the injuries suffered in the accident from the economic loss caused by the permanent disability and treated both of them as separate heads of compensation. Therefore, this Court is under a duty to determine the compensation payable on these two heads.

5. The learned counsel for the appellant/claimant submitted as per the medical evidence, the appellant has been stated to have 90% disability for the fracture of his right leg under the right thigh. He was 38 years old at the time of accident and he was a retail saree vendor who used to buy and sell the sarees and hence the Tribunal has not reckoned his monthly income and calculated the loss of his earning power inasmuch as he has to carry his merchandise by himself and the nature of injuries he suffered he may not be able to do the same job in the same degree of efficiency.

6. The learned counsel for the respondent/Transport Corporation argued that the nature of injury is not such that it could be said to affect functional disability of the appellant to earn.

7. After carefully going through the material papers, this Court finds that it would be appropriate to hold that the appellant/claimant has suffered 20% disability since the accident took place in the year 1995. Reckoning the notional monthly income at Rs.1,500/- and as per Sarala Verma Dictum, applying multiplier of 15, the total compensation payable to the claimant on this head is Rs.54,000/- (Rs.1500/- X 12 X 15 X 20% =Rs.54,000/-) and on the head of permanent disability, the compensation awarded by the Tribunal is just and reasonable.

8. The compensation therefore payable is as follows:

Heads	Amount awarded (Rs.)
Towards Loss of Income	12,000/-
Towards Transport	5,000/-
Towards Extra Nourishment	5,000/-
Medical Expenses	70,196/-
Pain & Suffering	10,000/-
Permanent Disability	75,000/-
Compensation for loss of earning power	54,000/-

Heads	Amount awarded (Rs.)
Future Medical Expenses	15,000/-
Total	2,46,196/-

9. In the result, C.M.A. No.157 of 1999 is dismissed. C.M.A.No.1767 of 1998 is partly allowed and the compensation is accordingly increased from Rs.2,19,196/- to Rs.2,46,196/- and the respondent/Transport Corporation is hereby directed to deposit the same less the amount if any, already deposited with interest at 9% p.a., within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is permitted to withdraw the same forthwith. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssn

To

The II Judge,
The Motor Accident Claims Tribunal,
(Small Causes Court),
Chennai.

Copy to

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

+lcc to Mr.M.Swamikkannu, Advocate sr.76288

C.M.A.Nos.1767 of 1998 and 157 of 1999

vgi[col]
srg 6/8/2018