

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.238 of 2011

Govindaraj

... Appellant

Versus

The Managing Director,
Tamil Nadu State Transport corporation Ltd.,
Bharathipuram,
Dharmapuri.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 06.08.2010 made in MCOP.No.1030 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri.

For Appellant : Mr.Selvakumar

For Respondent : Mr.D.Venkatachalam

JUDGMENT

The claimant Govindaraj, aged 48 years, doing business in grains and earning a sum of Rs.7,500/- p.m. suffered amputation, in an accident that took place on 01.12.2007. The Tribunal has awarded a sum of Rs.2,98,000/- with interest @ 7.5% from the date of claim petition till the date of realisation.

2. Challenging the award as inadequate the claimant has filed this appeal.

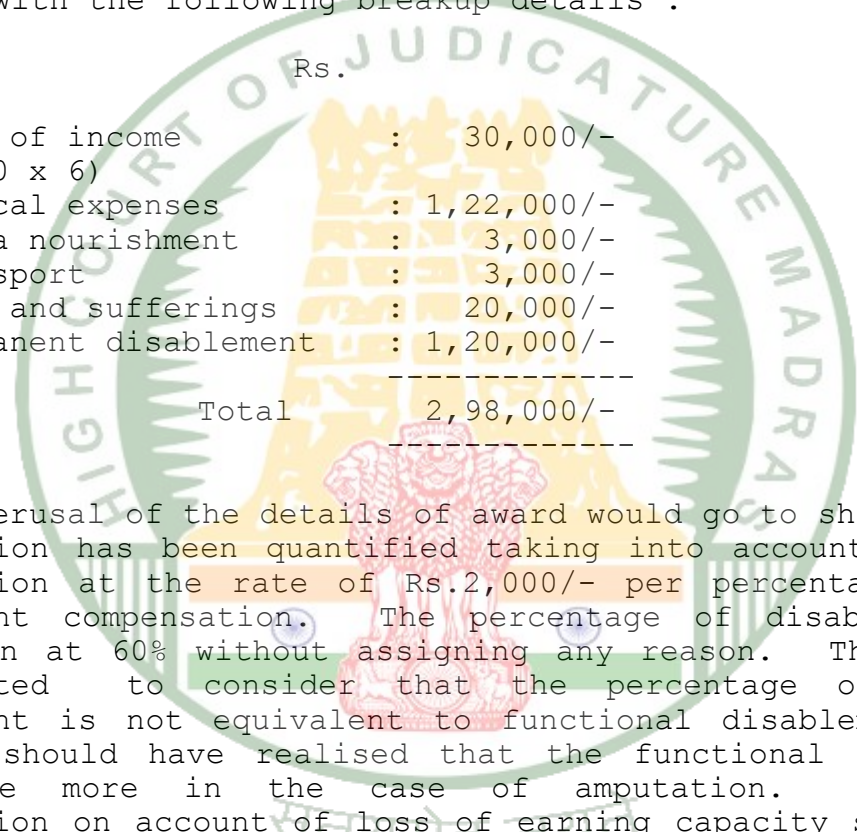
3. The main contention of the learned counsel for the claimant /appellant is that fixing of permanent disablement at 80% is unjustified and it is not in proportion to the injuries sustained; therefore, the permanent disability ought to have been fixed at 100%.

4. Taking into account of the amputation of the right leg, the contention of the claimant that he could not engage even in his daily activities must be true.

5. It is also contended that the attendant charges and loss of amenities has not been awarded at all.

6. A perusal of the evidence on record would go to show that the claimant has suffered amputation below the knee in his right leg. In the discharge summary, it is described that the right leg has been crushed and non viable. Therefore, the Doctor has assessed the disability at 80%.

7. The claimant has claimed a compensation of Rs.10,00,000/- before the Tribunal in which, a sum of Rs.2,98,000/- was awarded, with the following breakup details :



Rs.	
Loss of income (5000 x 6)	: 30,000/-
Medical expenses	: 1,22,000/-
Extra nourishment	: 3,000/-
Transport	: 3,000/-
Pain and sufferings	: 20,000/-
Permanent disablement	: 1,20,000/-

Total	2,98,000/-

8. Perusal of the details of award would go to show that the compensation has been quantified taking into account, awarding compensation at the rate of Rs.2,000/- per percentage towards disablement compensation. The percentage of disablement has been taken at 60% without assigning any reason. The Tribunal has omitted to consider that the percentage of physical disablement is not equivalent to functional disablement. The Tribunal should have realised that the functional disablement should be more in the case of amputation. Therefore, compensation on account of loss of earning capacity should have been awarded and it has not been done so.

9. Having regard to the nature of injuries sustained by the claimant, an amputation of his right leg below knee, this Court is inclined to enhance the compensation awarded by the Tribunal by adopting multiplier method of quantification in respect of loss of earning capacity and the compensation is restructured as hereunder :

9.1 Monthly income including future prospective increase in income is taken at Rs.4500/-p.m.

		Rs.
1	Permanent disability Rs.4500 x 12 = 54,000 x 13	7,02,000
2	Loss of income for 6 months	25,000
3	Pain & suffering	30,000
4	Transport expenses	10,000
5	Attendant charges	10,000
6	Loss of enjoyment of amenities	25,000
7	Extra nourishment	10,000
8	Medical expenses	1,22,000
	Total	9,34,000

10. In the result, the award passed by the Tribunal is enhanced to Rs.9,34,000/- as mentioned above. The Transport Corporation is directed to deposit the entire amount of compensation less the amount already deposited with interest at 7.5% per annum from the date of claim petition till the date of deposit. On such deposit being made, the claimant is permitted to withdraw 50% of the same. Remaining amount shall be in fixed deposit for a period of five years. The claimant is further directed to pay the court fee proportionate to the enhancement of compensation awarded in this appeal before obtaining a copy of the Judgment. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,Dharmapuri.

2. The Section Officer,
V.R. Section, High Court,Madras - 104.

+1cc to Mr.Selvakumar, Advocate, S.R.No.43592

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.43744

C.M.A. No.238 of 2011

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