

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.847 of 2015
and M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram - 605 602. ... Appellant/Respondent

Vs.

M.Kalaialagan ...Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 27.06.2014 made in M.C.O.P.No.1588 of 2009 on the file of the Motor Accident Claims Tribunal [Special Subordinate Court II], Salem.

For Petitioner : Mr.J.Lokesh
for K.J.Sivakumar

For Respondent : Mr.C.Kulanthaivel

J U D G M E N T
सत्यमेव जयते

(Order of the Court was made by M.GOVINDARAJ, J.)

Challenging the award of compensation granted by MACT [II Additional Special Subordinate Court], Salem in MCOP.No.1588 of 2009 dated 27.06.2014, the Transport Corporation has preferred the above appeal. The Transport Corporation has mainly contended that the Tribunal has granted the compensation without any valid document, proving the income of the injured/claimant. The further contention is that the multiplier adopted, for computing loss of future earning is not correct. The quantum awarded under other heads, is excessive.

2. Injured/claimant was working as a Head Constable, and was aged about 50 years. In the accident, in which the transport corporation bus bearing Regn.No.TN-32-N-2895, hit him from behind, he suffered injuries. According to him, due to the accident, he suffered spinal cord injuries and became immobilised, below the hip. In view of the medical invalidation, he was discharged from service. He underwent 3 surgeries for the same, and lost his senses, below the hip. He cannot move anywhere and cannot survive, without medical assistance.

3. Considering the medical record and the evidence of PW3, Doctor, the tribunal fixed the functional disability at 100%. Injured was aged about 50 years and based on the judgment in Smt. Sarala Varma & others Vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1(SC), the tribunal applied '13' multiplier. Ex.P9, is the salary certificate, marked before the Tribunal. Generally, in respect of a Government servant, when a document is marked as proof of income, it has to be given credence. The tribunal had considered the details of the income in Ex.P9 and found that the annual income does not exceed the taxable limits. Relying on the judgment of Hon'ble Supreme Court in Rajesh & Others Vs. Rajbir Singh and Others, reported in (2013) ACJ 1403, the tribunal has added 15% towards future prospects.

4. Thus, relying on Ex.P9, the Claims Tribunal fixed the monthly income as Rs.17,420/-. Though, at the time of accident, the injured was working as a police constable and had the opportunity of getting increments and promotion, the Tribunal, as stated above, awarded only 15% towards future prospects. Thus, a sum of Rs.27,17,520/- was awarded towards future loss of income.

5. Contention of the learned counsel appearing for the Transport Corporation, that there is no proof of income, cannot be accepted. Ex.P9, is the Salary Certificate issued by the department. What more is required? Further argument of the Transport Corporation that the injured would retire at the age of 58, and that he will not be in a position to earn the entire salary, after retirement and that he would be drawing a lesser amount, as pension, certainly has some force. Considering the same, we are of the view that the Tribunal should have applied split multiplier, taking note of the judgment of Supreme Court in Puttamma & Others Vs. K.L.Narayana Reddy, reported in 2014 (1) TNMAC 481 (SC). Certainly the injured is entitled to pension, but not the full salary, that he was receiving, while in service. Therefore, we are of the view that the argument of the learned counsel for the appellant-transport corporation, is tenable. Applying the ratio of split multiplier, we are of the

view that compensation has to be fixed with full salary for 8 years, and reduced for the remaining 5 years, after retirement. Accordingly, loss of earning is computed, as hereunder

Income	: Rs. 15,148/-
Add: 15% towards Future Prospects	: Rs. 2,272/- -----
Monthly Income	: Rs. 17,420/- -----
Loss of earning power for 8 years with full salary	: Rs.16,72,320/-
for 5 years with 50% salary	: Rs. 5,22,600/- -----
Loss of earning power	: Rs.21,94,920/-

6. The tribunal has awarded Rs.27,17,520/-. By reworking, towards loss of future earning, the amount is reduced to Rs.21,94,920/-. Other than this, the tribunal has awarded compensation under other heads, as follows:

Pain and suffering	: Rs.2,00,000/-
Medical Expenses spent	: Rs.3,23,940/-
Loss of amenities and enjoyment of life	: Rs.1,50,000/-
Loss of expectation of life and shortening of normal longevity	: Rs.1,00,000/-
Transport	: Rs.1,00,000/-
Nutrition	: Rs.1,00,000/-
Attender charges	: Rs.2,55,000/-
Damages to clothes and articles	: Rs. 540/-
Future attender charges for 12 years	: Rs.2,88,000/-
Future Medical expenses	: Rs.2,00,000/-
For disability compensation	: Rs.1,50,000/-

Above amounts are borne out by documents marked by the injured/claimant in Ex.P3 to Ex.P28 and upon analysis of supporting oral evidence. We do not find any perversity, except the award under the head, disability compensation, which according to us, is less, considering the extent of disability arrived at by the Tribunal, on the basis of medical evidence.

7. In so far as disability compensation is concerned, we are of the view that due to grievous injuries, he has become totally immobilized. He has lost senses below hip. He has lost his amenities. Considering the gravity of the injuries, disability suffered due to the injuries caused, we consider that disability compensation of Rs.1,50,000/- awarded by the tribunal is inadequate and requires enhancement to Rs.2,00,000/-. Towards disability compensation, the tribunal has awarded only

Rs.1,50,000/- and for the reasons stated supra, it is increased by Rs.50,000/-, and disability compensation awarded by this Court is Rs.2,00,000/-.

8. After awarding just compensation, under the heads detailed above compensation is modified, and reduced to Rs.41,12,400/- as detailed hereunder.

Loss of earning power	
for 8 years with full salary	: Rs.16,72,320/-
for 5 years with 50% salary	: Rs. 5,22,600/-
Loss of earning power	: Rs.21,94,920/-
Pain and suffering	: Rs. 2,00,000/-
Medical Expenses spent	: Rs. 3,23,940/-
Loss of amenities and enjoyment of life	: Rs. 1,50,000/-
Loss of expectation of life and shortening of normal longevity	: Rs. 1,00,000/-
Transport	: Rs. 1,00,000/-
Nutrition	: Rs. 1,00,000/-
Attender charges	: Rs. 2,55,000/-
Damages to clothes and articles	: Rs. 540/-
Future attender charges for 12 years	: Rs. 2,88,000/-
Future Medical expenses	: Rs. 2,00,000/-
For disability compensation	: Rs. 2,00,000/-
Total	: Rs.41,12,400/-

9. Record of proceedings shows that this Court, by an order, dated 27.04.2015, has directed the appellant Transport corporation to deposit 75% of the award amount, including interest as on that date and costs. Further direction has been issued, permitting the respondent/claimant to withdraw 50% of the amount deposited.

10. It is submitted by the learned counsel for the parties that 75% of the award amount has been deposited, and 50% of the same has been withdrawn by the respondent/claimant. In view of the above, we hereby direct the appellant-transport corporation to deposit the balance of the modified amount, with proportionate interest, at the rate of 7.5% per annum, from the date of claim till deposit, within a period of six weeks from the date of receipt of a copy of this order. We further direct that on such deposit, respondent / claimant is entitled to withdraw the same.

11. In the result, compensation amount is reduced by Rs.4,72,600/-. Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Cs II)

//True Copy//

Sub Assistant Registrar

ars/dsa

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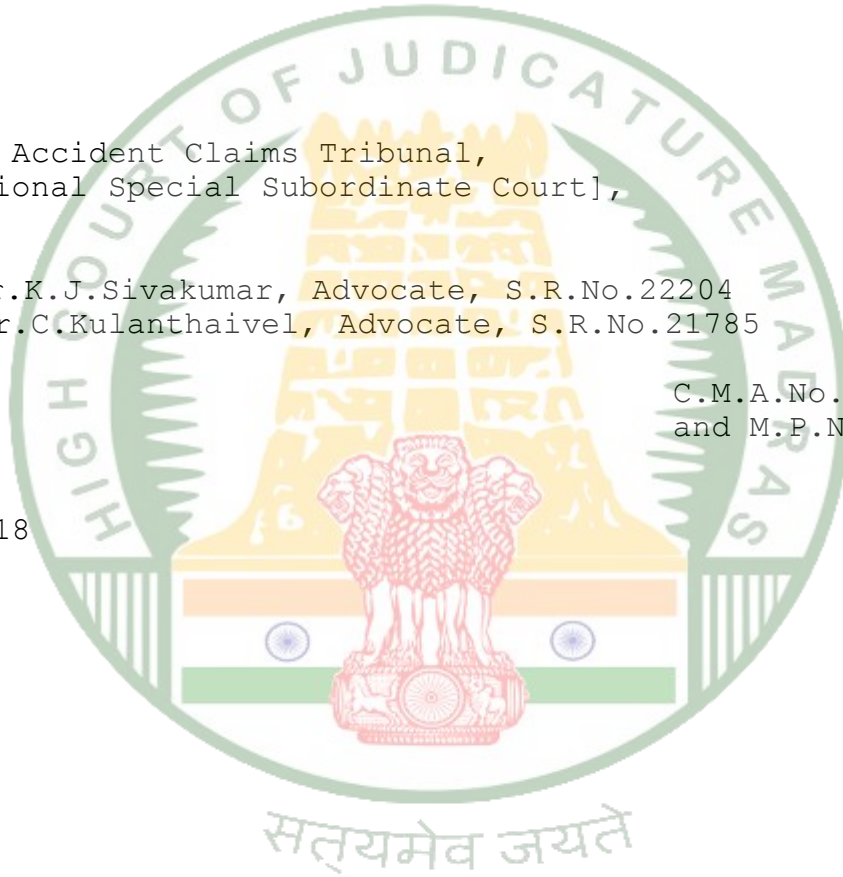
The Motor Accident Claims Tribunal,
[II Additional Special Subordinate Court],
Salem.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.22204

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.21785

C.M.A.No.847 of 2015
and M.P.No.1 of 2015

GJII (CO)
CS/21/03/18



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