

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.253 of 2017
and
C.M.P.No.1701 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Division II,
Chennimalai Road,
Erode. ... Appellant/2nd Respondent

...vs...

1. Kannappan @ Kannan ...1st Respondent/Petitioner

2. Sivakumar2nd Respondent/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1989,
against the Judgment and Decree dated 16.12.2014, made in
M.C.O.P.No.286 of 2014 on the file of Motor Accident Claims
Tribunal (Sub Court), Gobichettipalayam.

For Appellant : Ms.R.T.Sundarai
For R1 : Mr.Ma.Pa.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the
Transport Corporation, challenging the quantum of compensation
as exorbitant and disproportionate to the injuries suffered by
the claimant.

2. The claimant, Kannappan @ Kannan, aged 35 years, employed
as Contractor/Supplier, earning a sum of Rs.18,000/- per month,
suffered amputation in the accident that took place on
07.10.2013. Hence, he filed a claim petition before the
Tribunal, claiming compensation of Rs.35,00,000/-.

3. The Tribunal, on considering the oral and documentary
evidence, has quantified the compensation at Rs.6,35,000/-. The
following are the break-up details of the compensation:-

Permanent disability	-	Rs.1,25,000/-
Partial loss of earnings	-	Rs.4,00,000/-
Transport to Hospital	-	Rs. 5,000/-
Extra nourishment	-	Rs. 15,000/-
Attender charges	-	Rs. 15,000/-
Medical expenses	-	Rs. 20,000/-
Pain and sufferings	-	Rs. 50,000/-
Mental agony and shock	-	Rs. 5,000/-

Total	-	Rs.6,35,000/-

4. The learned counsel appearing for the appellant/Transport Corporation submits that when the Tribunal has awarded permanent disability at Rs.1,25,000/-, the award of partial loss of earnings at Rs.4,00,000/- is unjustified.

5. On the other hand, the learned counsel appearing for the first respondent submits that it is a case, where, the loss of earning capacity ought to have been quantified, adopting multiplier method and it is a case, where, some amount of compensation ought to have been awarded for the purchase the caliper and therefore, the award passed by the Tribunal is grossly inadequate and it is a fit case for enhancement.

6. The learned counsel for the appellant Transport Corporation opposed enhancement of compensation on the ground that there is no separate cross appeal filed by the claimant for enhancement of compensation. Though such a contention is raised, the same does not deserve acceptance for the simple reason that it is the duty of the Court to award just and reasonable compensation even in the absence of any cross appeal being filed for enhancement. Considering the entire factual matrix, it is open to the Court to award just and reasonable compensation, including enhancement.

7. In Nagappa v. Gurudayal Singh, (2003 (2) SCC 274 :: 2003 SCC (Cri) 523), the Apex Court held as under :-

"7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred

to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is - it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act". Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

8. The above view has been reiterated by the Apex Court in Ibrahim - Vs - Raju (2011 (10) SCC 634 :: 2012 (1) SCC (Cri) 120 :: 2012 (3) SCC (Civ), wherein it has been held as under :-

"21. We are conscious of the fact that in the petition filed by him, the appellant had claimed compensation of Rs 3 lakhs only with interest and costs. It will be reasonable to presume that due to financial incapacity the appellant and his family could not avail the

services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for that reason this Court are duty-bound to award just compensation, we deem it proper to enhance the compensation from Rs 1,89,440 to Rs 6 lakhs. This approach is in tune with the judgment in Nagappa v. Gurudayal Singh [(2003) 2 SCC 274 : 2003 SCC (Cri) 523]. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corpn. of Greater Bombay v. Kisan Gangaram Hire [1987 ACJ 311 (Bom)] , Orissa High Court in Mulla Md. Abdul Wahid v. Abdul Rahim [1994 ACJ 348 (Ori)] and Punjab and Haryana High Court in Devki Nandan Bangur v. State of Haryana [1995 ACJ 1288 (P&H)] and observed: (Nagappa case [(2003) 2 SCC 274 : 2003 SCC (Cri) 523] , SCC p. 282, para 21)

"21. For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award 'just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."

9. Following the ratio laid down by the Apex Court in the above decisions, it is to be stated that the hands of this Court are not tied and that it is open to this Court to award any just and reasonable compensation on the basis of the evidence available on record. Therefore, the contention of the appellant/Transport Corporation that in the absence of a claim for enhancement, enhancement of compensation cannot be awarded is devoid of merits and is liable to be rejected.

10. The learned counsel for the claimant/first respondent further submits that amount of compensation as awarded by the Tribunal is not yet deposited and the claimant is in dire need of money for medical and other expenses and, therefore, this Court, even if not enhancing the compensation, may confirm the award passed by the Tribunal with direction to the appellant to deposit the same forthwith.

11. This Court has given its anxious consideration to the contentions advanced by the learned counsel appearing on either side and perused the materials available on record as also the award passed by the Tribunal. Though the claimant is entitled for enhancement even without filing a cross appeal, however, the precarious condition of the claimant is reflected in the argument of the learned counsel for the claimant, who, due to the dire necessities of the claimant, restricts his claim to the amount awarded by the Tribunal. However, this Court is of the considered view that it is the duty of the Court to render substantial justice and, therefore, it is incumbent upon the Court to appreciate the materials on record to come to a conclusion.

12. A perusal of the order passed by the Tribunal reveals that the Tribunal has awarded a sum of Rs.4,00,000/= under the head partial loss of earnings. However, no reason has been given as to how the said sum has been arrived at by the Tribunal. It is a consolidated sum awarded by the Tribunal. Neither the percentage method of quantification nor the multiplier method has been adopted. In such circumstances, this Court is of the considered view that the basis of the injuries suffered by the claimant, the treatment taken and the future treatment that needs to be taken and also the impact of the injuries on the future life of the claimant, warrants application of multiplier method.

13. Accordingly, fixing the monthly income of the claimant at Rs.4,000/- and the age of the claimant being 35 years, taking the disability of the claimant at 65% on the basis of the evidence available on record and adopting multiplier of '16' the compensation under the head partial loss of earnings is requantified at Rs.4,99,200/- ($\text{Rs.4,000/-} \times 12 \times 16 \times 65\%$), rounded to Rs.5,00,000/-. Taking note of the fact that the claimant has suffered amputation and caliper is a necessity for the claimant, this Court deems it fit to award a sum of Rs.25,000/- towards purchase of caliper.

14. Insofar as the other heads are concerned, a perusal of the compensation awarded under the said head reveals that the compensation under those heads are grossly inadequate and is not commensurate with the injuries suffered by the claimant. Since

the Court has awarded compensation towards loss of earning capacity, the compensation awarded under the head 'permanent disability' to the extent of Rs.1,25,000/- would stand redistributed to the other heads, which will be over and above the compensation already awarded under those heads. Accordingly, the compensation is enhanced and restructured as hereunder:

Partial loss of earnings	-	Rs.5,00,000/-
Transport to Hospital	-	Rs. 15,000/-
Extra nourishment	-	Rs. 35,000/-
Attender charges	-	Rs. 35,000/-
Medical expenses	-	Rs. 50,000/-
Pain and sufferings	-	Rs. 50,000/-
Mental agony and shock	-	Rs. 30,000/-
Loss of enjoyment of amenities	-	Rs. 20,000/-
Caliper	-	Rs. 25,000/-

Total	-	Rs.7,60,000/-

15. In the result, this Civil Miscellaneous Appeal is dismissed enhancing the compensation payable to the claimant from Rs.6,35,000/- to Rs.7,60,000/- as detailed above, which shall carry interest at 7.5% p.a. from the date of claim petition till date of deposit. No costs. Consequently, connected miscellaneous petition is closed.

16. The appellant Transport Corporation is directed to deposit the award amount as enhanced by this Court above along with interest at 7.5% p.a. from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant/first respondent through RTGS within a period of two weeks thereafter.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

ogy/GLN

To

1. The Sub Judge
Motor Accident Claims Tribunal
(Sub Court), Gobichettipalayam.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 10501.

+1 CC to Ms.R.T. Sundari, Advocate sr 10377.

C.M.A.No.253 of 2017

PVS (CO)
SP(06/08/2018)



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