

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2699 of 2017

and

C.M.P.No.15086 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division) Ltd.,
Having its office at 37,
Mettupalayam Road,
Coimbatore - 43. .. Appellant/2nd respondent

/Vs/

1.P.Prasanth @ Nanthakumar .. 1st Respondent/Petitioner
2. Sundarraaj .. 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.03.2016 made in M.C.O.P.No.165 of 2015 on the file of the Motor Accident Claims Tribunal, The Special Subordinate Judge Erode.

For Appellant : Mr.K.J.Sivakumar

For Respondent : Mr.R.Nalliyappan
No.1

JUDGMENT

The Transport corporation has filed this appeal challenging the quantum of compensation awarded to the injured claimant Prasanth @ Nanthakumar.

2. The injured Prasanth @ Nanthakumar, aged 27 years, working as Supervisor in Supper Coco Company, Pollachi, earning a sum of Rs.10,000/- per month, met with an accident on 26.11.2014. According to the claimant, the injury sustained i.e. bone fracture, has led to permanent disablement and

consequently, there is a loss of earning capacity and therefore, the loss must be compensated. A claim petition for compensation has been filed by claimant for a sum of Rs.5,00,000/- before the Motor Accident Claims Tribunal at Erode in M.C.O.P.No.165 of 2015.

3. The Tribunal, on consideration of the materials placed before it, passed an award for a sum of Rs.3,92,100/- with the following break-up details;

Loss of income	:	Rs. 18,000.00
Transport expenses	:	Rs. 3,000.00
Extra Nourishment	:	Rs. 10,000.00
Damages for clothes and Articles	:	Rs. 500.00
Medical Expenses		
future medical expenses and attender charges	:	Rs. 600.00
Pain and Suffering, loss of amenity of life, happiness, inconvenience	:	Rs.1,00,000.00
Disability	:	Rs.1,95,000.00
Loss of earning Power	:	Rs. 65,000.00

Total	:	Rs.3,92,100.00

Assailing the quantum of compensation as excessive and disproportionate, the Transport Corporation has filed this appeal.

4. The learned counsel for the transport corporation submits that the permanent disablement fixed as 65% is on the higher side; that the sum of Rs.1,00,000/- awarded towards pain and suffering ought not to have been awarded and the award of Rs.65,000/- under the head of loss of earning power is on the higher side.

5. In order to appreciate the contention, it is necessary to go through the details of injuries suffered and other documentary evidence filed in support of the claim.

6. The Tribunal has relied upon Ex.P5, wound certificate and Ex.P10, disability certificate to assess the loss of earning capacity. The fact remains that the claimant is in the threshold of life, aged only 27, earning a sum of Rs.10,000/- per month.

7. Insofar as the evidence of the doctor relating to the medical condition of the claimant is concerned, the Tribunal, while discussing the nature of injuries suffered by the claimant and also the deposition of P.W.2 Doctor, has stated as follows:

"The doctor, who examined the petitioner for the purpose of assessing disability was examined as P.W.2, who deposed that, while examining the petitioner by taking x-ray he found that left side chest rib bone mal-united left side chest expansion 1/2 inch lesser than right side chest. There is a bunch of death cells called clymata found under the brain area. In the head inside to maxilla bone air entered inside and there is a swelling, zygoma bone mal-united, frontal bone mal-united. There is a scar found on the left side chest witnessing the ICD procedure. Therefore, left side chest without entering air found strengthless, in the head front area measuring 2 x 1 x 1 found without head and with awkward scar. At the time of inhaling breath radius of the petitioner chest found 95 cm exhaling 93 cm. Normally this difference should be 5 cm. Petitioner also having giddiness trouble. Therefore, it is difficult for the petitioner to breath normally and therefore, he could not do any work. He could not bend towards front and side way. He could not lift weight on his head. He could not do work for a long time in sunrise. Petitioner feels difficulty in breathe during climbing stairs therefore, he could not do his day to day works and therefore, he assess the partial permanent disability as 65%."

8. It has been observed by the Tribunal that living each day in itself is an experience of no pleasure but pain and sufferings apart from frustration and emotional turmoil. After going through the relevant case laws, the Tribunal has awarded a sum of Rs.1,95,000/- as disablement compensation at the rate of Rs.3,000/- per percentage of disability ($65 \times 3 = 1,95,000$), fixing the disability at 65%. The Tribunal has considered all the material aspects of the evidence and appreciated the evidence in its proper perspective and has fixed the disability at 65%, as has been certified by the Doctor. No material to the contra has been put forth on the side of the appellant. In the absence of the same, the fixation of the disability at 65% and the consequential award of compensation at Rs.3,000/- per percentage of disability does not warrant any interference.

9. The learned counsel for the respondent/claimant submits that the Tribunal should have adopted multiplier method for quantification of loss of earning power and that the compensation awarded at Rs.65,000/- at Rs.1,000/- per percentage is grossly inadequate and the same requires enhancement.

However, the said submission is countered by learned counsel for the appellant submitting that already disablement compensation has been awarded at Rs.1,95,000/- and, therefore, the loss of earning power granted above is excessive and same requires reduction.

10. What is relevant for consideration in quantifying the amount towards loss of earning power is the functional disability consequent to the partial permanent disablement, which has been fixed at 65%. A perusal of Ex.P14 Discharge summary reveals that the claimant was treated as inpatient at Coimbatore Government medical College hospital from 27.11.2014 to 9.12.2014 for head injuries sustained in the accident. The case sheet maintained in the Coimbatore Medical College Hospital, which is marked as Ex.P15 reveals that the claimant sustained the following injuries :-

- 1) Laceration near left eye 9x2x2 cm.
- 2) Laceration the right partial region 4x1x1 cm.
- 3) Abrasion 3 x 2cm over back.
- 4) Abrasion 3 x 3 cm left shoulder.
- 5) Multiple small abrasions over the body.
- 6) Laceration in right eye 1 x 0.5 x 0.5 cm.

11. As per the Ex.P5 wound certificate, the claimant also sustained fracture at left frontal EDH, left frontal bone, left maxilla zygoma orbit, left 7th rib and it has been opined that the wounds are grievous in nature.

12. The above medical evidence reveals that though the injuries are grievous in nature, but the evidence does not go beyond the nature of injuries in stating that the said injuries would hamper the day to day working of the claimant. In such view of the matter, this Court feels that once disability compensation has been awarded at Rs.3,000/- per percentage of disability, the compensation awarded under the head loss of earning power at Rs.1,000/- per percentage does not require interference. Further, the period of hospitalisation and the injuries sustained by the claimant does not warrant adoption of multiplier method for quantification of loss of earning power. Accordingly, the compensation under the head loss of earning power, awarded by the Tribunal, is confirmed.

13. Though it is contended by the learned counsel for the appellant that the amount awarded towards pain and suffering is on the higher side, it is to be noted that the said head does not pertain to pain and suffering alone, but takes within its fold loss of amenity, happiness, inconvenience, etc. Almost four heads are clubbed into a single head and compensation has been awarded. Though compensation should have been awarded separately under each head, however, clubbing all the heads a

consolidated amount is awarded. The compensation awarded under the above heads, in the considered view of this Court, does not require any interference and, accordingly, the same is confirmed.

14. Considering the nature of injuries, the period of treatment and the impact of disability upon the earning capacity of the claimant, the over all quantum of compensation awarded by the Tribunal is found to be reasonable and cannot be said to be excessive. There being no merits, this appeal is liable to be dismissed and, accordingly the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15. The appellant/Transport corporation is directed to deposit the entire award amount along with interest at 7.5% per annum and costs from the date of petition till the date of deposit, as determined by the tribunal, 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.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

sms/kv/GLN

To

1.(The Special Subordinate Judge)
Motor Accident Claims Tribunal,
Erode.

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

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.64038
+1cc to Mr.R.Nalliyappan, Advocate SR.No.64451

C.M.A.No.2699 of 2017
and

C.M.P.No.15086 of 2017

KJ(CO)
GN(16/03/2018)