

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.589 of 2017

and C.M.P.No.3502 of 2017

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Kancheepuram.

... Appellant / Respondent

versus

Dhavamani

... Respondent / Petitioner

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 31.08.2012 made in M.C.O.P.No.227 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvallur.

For Appellant : Mr.S.Sairaman

JUDGMENT

If an injured after the accident is retained in the same employment with same pay, i.e. there is neither loss of job nor loss of income, whether compensation on account of loss of earning capacity can be denied, when especially, the 'saleability elsewhere' as a fresh recruit to a new employer may become a serious handicap to the injured. This is the issue raised by the claimant as an answer to the appeal filed by the appellant Transport Corporation.

2. The claimant, Dhavamani, aged 37 years, a Head Constable, earning a sum of Rs.10,000/- p.m., met with an accident on 27.09.2008. Hence, he filed a petition in M.C.O.P.No.227 of 2009 before the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvallur, claiming compensation of Rs.4,00,000/- as compensation.

2.1. As against the claim made, the Tribunal has awarded a sum of Rs.1,36,000/- as compensation, payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

Loss of earning for three months (Rs.30,000/- x 3 months)	-	Rs.	30,000/-
Pain and sufferings	-	Rs.	50,000/-
Transport charges	-	Rs.	5,000/-
Extra nourishment	-	Rs.	10,000/-
Medical expenses as per bills	-	Rs.	41,000/-
Total	-	Rs.	<u>1,36,000/-</u>

2.2. Challenging the quantum of compensation, the Transport Corporation has filed this Civil Miscellaneous Appeal.

3. The learned counsel appearing for the appellant would submit that the award passed is unsustainable in the eye of law and the award is disproportionate to the injuries sustained in any event.

4. The Tribunal has considered Ex.P4 - copy of the Accident Register and Ex.P3 - Discharge Summary issued by the Billroth Hospital, in order to know the nature of injuries sustained by the claimant. The claimant has suffered fracture on the left side 3-8th ribs, hemothorax, maxilla, xyomatic bone fracture. Disability certificate has been issued by the Doctor, which was marked as Ex.P6, where, the disability has been assessed at 65%. However, the Tribunal has given a finding that this disablement will not result in functional disablement involving loss of earning capacity. The entire claim on loss of earning capacity has been rejected only on the ground that there was no 'career loss' on account of this disablement, as he continued in employment as Police Constable and he has also been getting the same salary.

4.1. The petitioner has availed medical leave for a period of six months and above, as he was advised to take rest by Doctor and that made him to avail leave on loss of pay. Hence, the Tribunal awarded a sum of Rs.30,000/- towards loss of income for three months only. Having regard to the nature of injury and period of treatment, the Tribunal awarded a sum of Rs.50,000/- towards pain and suffering; Rs.5,000/- towards transportation; Rs.10,000/- towards extra nourishment; and Rs.41,000/- towards medical expenses as per medical bills. Hence, those amounts cannot be said to be excessive.

4.2. The Tribunal did not consider the grant of compensation on the head of loss of enjoyment of amenities and probable loss on account of likelihood of promotion being declined.

4.3. The nature of duty as a Police Constable is manifold. Depending upon the branch in which the Police Constable is posted, the nature of duty is likely to vary. The likelihood of exercising the option of choosing the employment elsewhere is also limited by the injury sustained in the accident. It would be appropriate to quote the decision in *Dhian Chand Singla v. Joga Singh and Others*, 2011 (3) T.A.C. 70 (P&H), wherein, there is a reference to decision of the House of Lords in *Vale v. William Huns and Sons Limited*, 1912 A.C.

496. The House of Lords held: "... that the incapacity of work included inability to work or in other words, there is incapacity for work when a man has a physical defect which makes his working un-saleable in any market reasonably accessible to him. Applying the same logic, a person who has suffered an injury may not come by immediate loss if he is retained in the same employment and does not lose his job, but in his own saleability elsewhere as a fresh recruit to a new employer, he may come by a serious handicap. That shall be a justification enough to provide for compensation in such types of cases." Even though there is no specific proof that the claimant has lost employment, the loss of vision in one eye certainly would effect his ability as fresh recruit to a new employer. It can only be hoped that the facial disfigurement suffered by him would not add to his woes in this regard. The tribunal has reasoned that the claimant would be able to carry on his avocation with one eye but his efficacy would be compromised owing to excess strain suffered by the remaining eye. Such reasoning and placement of loss of earning power at Rs.3,750/- per month is justified. However, we consider it necessary that the claimant separately be afforded compensation towards disfigurement to the face suffered by him as also for loss of amenity of the left eye. As the claimant was aged 30 years, the correct multiplier would be 17. The tribunal has not afforded any compensation towards loss of amenity which this court assesses at Rs.1,00,000/-. The grant towards pain and suffering may be enhanced to Rs.50,000/- and that towards temporary loss of income to Rs.50,000/-. We find reasonable the award under other heads.

This decision applies to the facts of this case. In this case, the compensation should have been awarded for the loss of enjoyment of amenities, loss on account of career advancement/new career acceptance.

4.4. Therefore, when the amount has not been awarded, which ought to have been awarded, the claim that the compensation awarded is excessive, cannot be successfully maintained.

5. Hence, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 31.08.2012 passed in M.C.O.P.No.227 of 2009 by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvallur.

6. The Transport Corporation is directed to deposit the entire amount of compensation, less the amount already deposited, if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the same. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
the Motor Accident Claims Tribunal,
Thiruvallur.

2. The Section Officer,
V.R.Section,
Madras High Court, Chennai.

C.M.A.No.589 of 2017

KJI (CO)
TR(21/11/2017)

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