

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.821 of 2017

M.Murugan
S/o.Marimuthu

... Appellant/Petitioner

-Vs-

The Managing Director
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai 600 002.

... Respondent/Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.5330 of 2011 dated 09.04.2013 , on the file of Motor Accident Claims Tribunal, (II Small Causes Judge) Chennai.

For petitioner : Mr.K.Varadha Kamaraj

For respondent : Mr.K.S.Suresh

ORDER

The present appeal has been preferred by the claimant against the award of Rs.4,89,000/-, questioning the quantum of compensation awarded by the Tribunal in his favour for the injuries sustained by him in the accident which occurred on 21.10.2011, when he was knocked down by the Metropolitan Transport Corporation bus driven in a rash and negligent manner, while walking on the road. Therefore the claim petition.

2.On contest, the Tribunal found that the bus was driven in a rash and negligent manner and awarded a sum of Rs.4,89,000/-.

3.Heard Mr.K.Varadha Kamaraj, the learned counsel for Appellant and Mr.K.S.Suresh, the learned counsel for respondent.

4.The claimant alone is before this Court questioning the quantum of compensation awarded by the Tribunal. No appeal has been preferred by the Transport Corporation either regarding

quantum or regarding negligence. Therefore, there is no necessity to go into the finding regarding the negligence.

5. In the accident, the Appellant sustained crush injury in his left leg leading to Amputation of left leg below knee as proved by Ex.P4/Copy of the injuries opinion form, Ex.P5/Discharge summary and Ex.P10/Disability certificate.

6. The Tribunal determined the disability at 50% even though P.W.2/Doctor deposed that the disability is 70%. The said determination of 50% disability is very low, especially when the claimant's left leg was amputated and there was no contrary evidence adduced by the respondent with regard to the disability. Therefore, the 70% disability determined by P.W.2/Doctor has to be accepted, even though the Tribunal has given reasoning that as per Workmen's Compensation Act, Schedule-I, the percentage to be assessed for below knee amputation is 50%. Assuming for a moment that the 50% disability has to be accepted, what is to be seen is the loss of earning capacity. Even if 50% disability is caused, definitely the appellant would not be in a position to make any income. What is to be seen is the effect of amputation of left leg on the life of the claimant. Though the Act says 50% disability, in reality, the appellant would not be in a position to get any employment or can do any independent work. Whether it is 50% disability or 70% disability, the loss of income earning power would be 70%. Therefore, this Court deems it appropriate to fix the loss of income earning power by the Appellant at 70% and instead of taking the loss of earning power as 50%, this Court is justified in taking it as 70% .

7. The Tribunal has fixed the income at Rs.4,500/- [Rupees Four Thousand and Five Hundred only] per month. However, the Honourable Supreme Court in Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd. reported in 2014 (1) TNMAC 459 (SC), determined the monthly income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) for a vegetable vendor, who sustained injury in the accident occurred on 14.07.2008, in the absence of any proof regarding monthly income. Therefore, this court is inclined to follow the determination made in the above judgment and accordingly fix the monthly income of the claimant at Rs.6,500/- (Rupees Six Thousand and Five Hundred only).

8. No amount towards "future prospects" was added by the Tribunal as per the judgment of the Honourable Supreme Court in Rajesh and others v. Rajbir Singh and others reported in (2013) 9 Supreme Court Cases 54. Since the age of the claimant is only 42 years, 30% has to be added towards his "future prospects". Thus, if 30% is added, the monthly income of the injured would be Rs.8,450/- (Rupees Eight Thousand Four Hundred and Fifty Only) [Rs.6,500 + 30% = Rs.8,450/-].

9.Further, according to the age of the appellant, the appropriate multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TN MAC 1 (SC), is 14 and accordingly, the loss of income would be Rs.9,93,720/- (Rupees Nine Lakhs Ninety Three Thousand Seven Hundred and Twenty only) [Rs.8,450 X 12 X 14x70/100].

10.Furthermore, a sum of Rs.6,000/- [Rupees Six Thousand Only] awarded towards transportation is too low and the same is enhanced to Rs.15,000/-, as the claimant has to travel every time for taking treatment to the hospital.

11.The amount of Rs.5000/- awarded towards extra-nourishment is too meager and the same is enhanced to Rs.25,000/-.

12.A sum of Rs.1000/- awarded towards damage to clothing and materials is confirmed.

13.A sum of Rs.5000/- awarded towards medical expenses is also confirmed.

14.A sum of Rs.20,000/- awarded towards loss of amenities, discomfort and mental agony is very low and the same is enhanced to Rs.50,000/-

15.A sum of Rs.20,000/- awarded by the Tribunal towards pain and suffering is very low. To get injured in an accident itself is very painful and that too, getting crush injury leading to amputation of left leg below knee, definitely would have caused much pain and unbearable hardship to the claimant. Therefore Rs.20,000/- awarded towards pain and sufferings is enhanced to Rs.50,000/-.

16.Since amputation of the leg was made, in an effort to enhance the quality of life, artificial limb can be utilized and therefore, a sum of Rs.30,000/- is awarded in this regard.

17.Thus, a sum of Rs.4,89,000/- [Rupees Four Lakhs Eight Nine Thousand Only] is enhanced to Rs.11,69,720/- [Rupees Eleven Lakhs Sixty Nine Thousand Seven Hundred and Twenty Only].

18.The rate of interest at 7.5% p.a remains unaltered. The appellant is directed to pay additional court fee within two weeks. The respondent is directed to deposit the entire amount, after deducting the amount already paid (if any), within a period of four weeks from the date of receipt of a copy of this order. On such deposit the appellant is permitted to withdraw only a sum of Rs.7,00,000/- [Rupees Seven Lakhs Only], which has to be transferred to his account through RTGS by the Tribunal. The balance amount has to be deposited in

interest bearing Fixed deposit in anyone of the Nationalized Banks, atleast for a period of five years, so that the life of the claimant would be secure.

19.In fine, the appeal is partly allowed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

pgp/kas

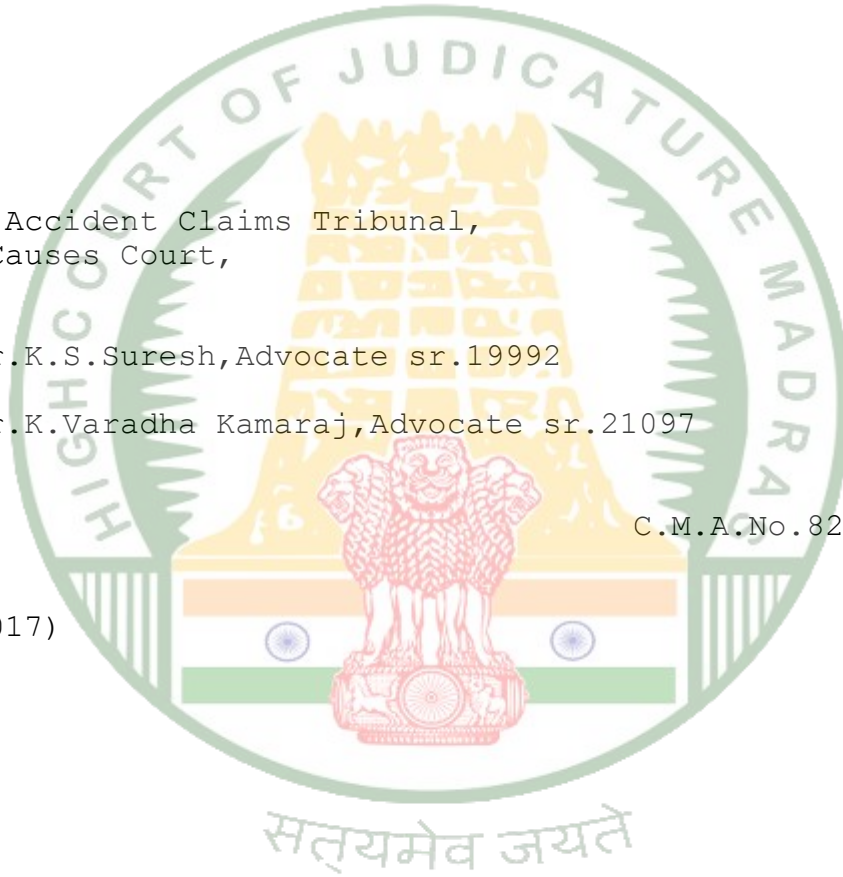
To
The Motor Accident Claims Tribunal,
II Small Causes Court,
Chennai.

+1cc to Mr.K.S.Suresh,Advocate sr.19992

+1cc to Mr.K.Varadha Kamaraj,Advocate sr.21097

C.M.A.No.821 of 2017

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