

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on: 21.11.2016

Judgment Pronounced on: 04.08.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1167 of 2009

R.Arunachalam

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited
(Villupuram Division-III) Ltd.,
Kancheepuram - 631 501.

.. Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree made in MCOP.No.1198 of 2005 dated 19.11.2008 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Mr.UM.Ravichandran
For Respondent : Mr.D.Venkatachalam
for K.J.Sivakumar

J U D G M E N T

The claimant in MCOP.No.1198 of 2005, before the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai, has preferred this appeal, seeking enhancement of compensation awarded to him for the injuries suffered by him in a motor accident that took place on 21.06.2004 at about 10.30 a.m., when he was travelling in the State Corporation bus bearing No.TN21-BN-0115.

2. The accident per se is not disputed and the claimant only contends that the compensation awarded by the Tribunal is disproportionately low as compared to injuries he has suffered and loss he suffered to his earning capacity. Before the Tribunal, the appellant has claimed the total compensation of Rs.5,00,000/- under various heads which included compensation for continuing disability at Rs.1,20,000/- and compensation of loss of earning capacity was claimed at Rs.1,00,000/-. To prove the disability, the appellant has examined P.W.2, the doctor who treated him, who assessed his disability and he gave Ext.P6, the disability certificate as per which appellant's disability was assessed at 55%.

3. The trial Court has found that since the percentage of disability was assessed some four years after the accident, it thought it fit to fix the disability at 45% and awarded a compensation of Rs.45,000/- on that head. As far as loss of income is concerned, the Tribunal has not awarded any amount under that head and proceeded to pass an award for Rs.1,40,740/-. The break-up is as follows :

Heads	Amount (Rs.)
Compensation for partial and permanent disability	45,000
Pain and suffering and mental agony	10,000
Transportation to hospital	1,000
Extra nourishment	4,000
Medial Expenses	70,740
Loss of earning	10,000
Total :	1,40,740

4. The learned counsel for the appellant submitted that in the matter of determining compensation for permanent disability, the Tribunal ought to have referred to Schedule II Clause V wherein it is stated that in cases where the injuries deemed to result in permanent total disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923. He also took this Court to the relevant provisions of Workmen Compensation Act, 1923. In this regard, the prime contention of the learned counsel for the appellant is that the appellant owns a pharmacy which stands established under Ext.P3 and Ext.P4 and it is not disputed by the respondent. Whereas the appellant has claimed Rs.25,000/- as his monthly income, the Tribunal has determined the same at Rs.5,000/- notionally. The learned counsel for the appellant submitted that even this income has to be fixed notionally by no stretch realism it can be fixed at a paltry Rs.5,000/- per month. Secondly, the appellant reports loss of memory power and is unable to focus on the business and has appointed a staff to run the business at Rs.8,000/- per month. This aspect of the evidence of appellant, which he tendered before the Tribunal as P.W.1, was not cross-examined and hence it must be considered as admitted by the respondent. In view of this, loss of future income must be assessed, after taking into consideration, the principle laid down in Sarala Verma and Others Vs. Delhi Transport Corporation and Another [(2009) 4 MLJ 997] and Rajkumar Vs. Ajay Kumar and Another [CDJ 2010 SC 1153]. He also relied on the decisions of Hon'ble Supreme Court in Kumari Kiran thru. her father Harinarayan Vs.

Sajjan Singh & Ors. [2014 STPL (web) 607 SC] and Smt.Rajendra Kumari and another Vs. Smt. Shanta Trivedi and Others [AIR 1989 SC 1074].

5. The learned counsel for the respondent submitted that not every disablement need to be construed as loss of capacity for earning and in the absence of any evidence, it construed to be is in permissible for the Court to assume it so. He has relied upon the judgments of Hon'ble Supreme Court of India in Basappa Vs. T.Rames & Another [CDJ 2014 SC 854], Rajkumar Vs. Ajay Kumar & Another [CDJ 2010 SC 1153]. He further added, as to the monthly income of the appellant, if it was his claim that he had earned a sum of Rs.25,000/-, then at the time when the accident took place he ought to have been an income tax assessee. But the claimant opted not produced any evidence. Again if it was his contention that he appointed some supervisor to manage the business at a monthly salary of Rs.8,000/- per month, he ought to have placed tangible evidence on record to prove it. In the absence of any evidence, the approach of Tribunal cannot be faulted.

6. A perusal of evidence shows that the claimant/appellant has suffered multiple fractures to his right arm and also injuries to ulnar nerve etc., What is significant here is its impact on his ability to run his pharmacy. There is no evidence to establish the size of his business and the number of employees he had employed. To very large extent his job is more supervisory in nature and the fracture of a right hand cannot be termed as affecting his capacity to earn functionally to invite the principles in Ajay Kumar case. Having stated thus it still remain undisputed that he should be paid justly and fairly.

7. Here is a person who has suffered multiple fractures and the Tribunal has assessed the percentage of disability at 45%. Where however, the Tribunal has erred in quantifying the value of disability. While it has awarded Rs.45,000/- on this head, this Court double it. On the head of pain and suffering too, compensation is enhanced from Rs.10,000/- to Rs.20,000/-. On other heads, the compensation awarded by the Tribunal appear just, fair and reasonable. Following table provides the details of enhanced compensation :

Heads	Enhanced Compensation (Rs.)
Compensation for partial and permanent disability	90,000
Pain and suffering and mental agony	20,000
Transportation to hospital	1,000

Heads	Enhanced Compensation (Rs.)
Extra nourishment	4,000
Medial Expenses	70,740
Loss of earning	10,000
Total :	1,95,740

8. In the result, the appeal is partly allowed and the compensation payable to the appellant is enhanced to Rs.1,95,740/- and the respondent is directed to deposit the same with interest at 9.5% p.a., less if any already deposited, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the appellant/claimant is entitled to withdraw the same forthwith. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accident Claims Tribunal Court of Small Causes No.II, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras - 104.

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NM(CO)
VR(28/10/2017)