

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.3138 of 2012

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Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Kumbakonam Division-II,
Trichy Region,
Periamilaguparai,
Tiruchirapalli

Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decreetal order dated 18.06.2012 of the Motor Accidents Claims Tribunal / Sub Court, Ariyalur passed in MCOP.No.377 of 2009.

For Appellant :Mr.P.G.Rajagopal

For Respondent :Mr.V.S.Vijay Velliappan

JUDGMENT

A passenger of a State Transport bus who suffered injury when the bus he travelled met with an accident on 15.09.2009, has come forward with this appeal seeking enhancement of compensation.

2. On 15.05.2009 at about 11.00 p.m. the State Transport bus bearing No. TN45-N-1337 in which the claimant had travelled ran on to a road side tree, owing to which the appellant/claimant suffered injuries to his right hip, more particularly fractures to his right pelvic area and left tibia. He was hospitalised for 88 days between 16.5.2009 and 12.08.2009, during which period at least four surgeries were performed on him. P.W.2, the doctor, has assessed his disability at 71%. As against the claim of Rs.10,00,000/-, the Tribunal has passed an award for Rs.3,72,000/- payable with interest at 7.5% per annum. The major component of the compensation is the award towards medical expenses. This constitutes Rs.2,10,000/- and are supported by actual bills and

this is more in the nature of reimbursement of amount already and actually spent during treatment. Towards permanent disability of the claimant, the Tribunal has awarded Rs.1,42,000/- @ Rs.2,000/- per percentage of disability.

3. The learned counsel for the appellant submitted that the appellant is an agriculturist, aged 60 years and was making his own income at 60 years. He was hale and healthy to pursue his avocation as an agriculturist and the accident has impaired his ability to engage him in agriculture related activities. The claimant being self-employed, his future prospects should also have to be reckoned and must be factored in assessing the compensation, as per the ratio in Santhosh Devi Vs National Insurance Co., Ltd., [2012(2) TNMAC 1 (SC)]. In cases of manual labour, the court should take a pragmatic view of the impact that an injury might leave on the ability of the victim to work with the same degree of efficiency, argued the learned counsel and to fortify this idea, he placed reliance on the authority in Syed Sadiq Vs Divisional manager, United India Insurance Co., Ltd., [2014(1) TN MAC 459 (SC)] . According to the learned counsel for the appellant, so far as medical expenses are concerned, as per Ext.P12-medical bills, the total amount spent was Rs.3,48,052/-, but the Tribunal has arbitrarily denied the compensation of Rs.1,32,000/- and awarded only Rs.2,10,000/-. On pecuniary heads, such as pain and suffering, towards assistance, future medical expenses etc., the Tribunal has been unrealistic while arriving compensation.

4. Heard the respondent. Before I proceed to discuss the tenability of appellant's argument, it may be useful to tabulate the compensation awarded on various heads by the Tribunal :

Heads	Amount awarded (Rs.)
Permanent Disability	1,42,000
Medical Expenses : Towards purchase of medicines: Rs.1,50,000/- Treatment at private hospital : Rs. 60,000/-	2,10,000
Transportation	10,000.00
Nourishment	10,000.00
Total :	3,72,000.00

First, I straight away grant Rs.1,32,000/- more towards medical expenses as it appears to be borne out of arithmetical error. This would imply that the amount awardable on the head of medical expenses would be Rs.3,42,000/-. See Ext.P-12.

5. In assessing loss of future earning capacity, the Tribunal appeared to have approached the issue mechanically and has opted to compensate every percentage of disability at Rs.2,000/-. As it is reflected in Syed Sadiq case, in cases where the victim depends on his income on manual labour, the impact of physical injury must be viewed as one of the functional disability, its degree though may vary from case to case. Here is a 60 year old agriculturist who had suffered fracture to right pelvic area besides a fracture of left tibia, which appears lesser evil of the two injuries. A fracture to the pelvic area of a 60 year old man might not leave him in the same level of physical fitness, to enable him to contribute physical labour to earn his livelihood as before. There is every possibility that he would be forced to become financially and physically dependent sooner than others in his age group, and there is no presumption that a normal and reasonably healthy man though in his 60s would lose his ability to earn. Taking all these factors into consideration, I fix the functional disability of the claimant at 85%. The accident has taken place in 2009, and the appellant could have easily earned Rs.5,000/- a month. The appropriate multiplier is 9 and the loss of future earning capacity is determined as a product of Rs.5,000x 12 x 9 x 85% and is equivalent to Rs. 4,59,000/-. For pain and suffering Rs. 50,000/- is awardable and is accordingly ordered. As to the award on the heads of transportation and nourishment, the amount awarded by Tribunal remains unaltered. Thus, the final statement of the compensation payable in terms of this order is tabulated below :

Heads	Amount enhanced (Rs.)
Permanent Disability	4,59,000.00
Medical Expenses	3,42,000.00
Pain and Suffering	50,000.00
Transportation	10,000.00
Nourishment	10,000.00
Total :	8,71,000.00

6. In the result, the appeal is partly allowed by enhancing the award amount from Rs.3,72,000/- to Rs.8,71,000/-. The respondent/State Transport Corporation is directed to deposit the enhanced award amount of compensation along with interest at the rate of 7.5% per annum as determined by the Tribunal, within six weeks from the date of receipt of a copy of

this award, less any amount already deposited. The appellant is directed to pay the necessary court fee for the enhanced portion of award amount, if any. No Costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Sub Judge,
Motor Accidents Claims Tribunal,
Sub Court, Ariyalur.

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

+1 cc to Mr.P.G.Rajagopal Advocate sr 3231

CMA.No.3138 of 2012

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