

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2998 of 2005

The Managing Director,
Tamil Nadu State Transport Corporation,
Ramakrishna Road,
Salem.

... Appellant/Respondent

..Vs..

Kanjamalai

...Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award passed on 24.03.2005 in M.C.O.P.No.1929 of 2002 on the file of the Motor Accident Tribunal (I Additional District Judge, Dharmapuri at Krishnagiri).

For Appellants : Mr.P.Jagadeeswaran

For Respondent : Mr.T.Pappiah Dharmaraj

JUDGMENT

The present appeal is filed by the Managing Director, Tamil Nadu State Transport Corporation, Salem, under Section 173 of the Motor Vehicles Act, 1988 against the award dated 24.03.2005 in M.C.O.P.No.1929 of 2002 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Dharmapuri at Krishnagiri.

2.The brief facts of the case of the respondent/claimant is as follows:

On 12.04.2002 at about 11.00 pm, the claimant was traveling in the bus bearing Registration No. TN 27 N 1248 belonging to the respondent and he was proceeding towards Cuddalore from Attur. Due to the rash and negligent driving of the driver of the appellant/respondent, the bus toppled, as a result of which, the respondent/claimant sustained injuries all over his body. He was immediately rushed to Government Hospital at Attur. Subsequently, he took treatment at St. John's Hospital, Bangalore. Therefore, he claimed a compensation of Rs.3,00,000/- for the injuries sustained by him.

3.The appellant/respondent filed a counter denying all the allegations of the respondent/claimant. The learned I Additional District Judge, Motor Accidents Claims Tribunal, Dharmapuri at Krishnagiri after analysing the entire evidence on record, awarded a sum of Rs.2,19,279/- together with interest at the rate of 9% per annum to the respondent/claimant. Aggrieved over the same, the Managing Director, Tamil Nadu State Transport Corporation, Salem, has filed the present appeal contending that the quantum of compensation fixed by the Tribunal is on the higher side and is also arbitrary.

4.Mr.P.Jagadeeswaran, learned counsel appearing for the appellant contended that when the claimant has sustained only a fracture on his left knee and even as per the doctor (P.W.2), the partial permanent disability is 40%, and therefore, the trial court ought not to have adopted multiplier method.

5.Per contra, Mr.T.Pappiah Dharmaraj, learned counsel appearing for the respondent/claimant would contend that the claimant was a mason and on account of the injuries sustained by him, he is unable to walk as before and therefore, the award passed by the trial court is perfectly in order.

6.The learned I Additional District Judge, has rightly assessed the partial permanent disability as 30% even though the doctor (P.W.2) has assessed it as 40%. The reasons stated by the trial court for the assessment of partial permanent disability as 30% cannot be faulted with by this Court. However, the trial court should not have adopted multiplier method especially when there is no permanent disability. A division bench of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) ACJ (SC) has held that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. In the instant case, the disability of 40% refers to his left hand and not in regard to the entire body. The said extent of disability of the limb cannot be considered to be the functional disability of the body. It cannot also be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as mason though it might impede his smooth functioning. Therefore, the claimant at the most can be awarded only a sum of Rs.90,000/- towards partial permanent disability. The trial court has also committed an error in granting interest at the rate of 9% per annum when it has been consistently held by the Honourable Supreme Court as well as by this Court that the interest should be granted only at the rate of 7.5% per

annum. Therefore, the award dated 24.03.2005 in M.C.O.P.No.1929 of 2002 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Dharmapuri, Krishnagiri is liable to be set aside. The following amount is awarded to the respondent/claimant as detailed below:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.90,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation charges	Rs.10,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Medical expenses	Rs.22,079/-
6.	Loss of Income	Rs.3,000/-
Total		Rs.1,40,079/-

The award amount shall carry interest at the rate of 7.5 per cent per annum from the date of petition till the date of deposit. It is brought to the notice of this Court that the entire amount was already deposited and that the respondent/claimant has withdrawn 50% of the amount. The appellant/Corporation is entitled to withdraw the excess amount paid by them.

7.With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. I Additional District Judge, (MACT)
Dharmapuri at Krishnagiri.

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

+1cc to Mr.P.Jagadeeswaran, Advocate SR.No.77770

C.M.A.No.2998 of 2005

GP (CO)

GMV (10/01/2019)