

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3547 of 2005

Mohanraj

...Appellant / Claimant

Versus

1. S.Moses

2. The Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division II,
Chennimalai Road,
Erode - 2.

3. V.Senthilkumar

4. S.Gopalakrishnan

5. The New India Assurance Co.Ltd.,
V.R.V. Complex, First Floor,
Bhavani Main Road,
Perundurai - 638 052,
Erode District.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount awarded in Judgement and decree dated 24.01.2005 made in M.C.O.P.No.114 of 2003 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Erode.

For Appellant : Mr.N.Manokaran

For Respondents : No Appearance

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J U D G M E N T

The appellant is present. There is no representation for the respondents.

2. This appeal has been preferred by the claimant as against the decree and Judgment dated 24.01.2005 made in M.C.O.P.No.114 of 2003 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Erode.

3. The claimant has filed claim petition contending that on 09.03.2002 at about 4.10.pm, when he was travelling as a pillion rider in a bike bearing Registration No.TN-33-J-2365 driven by the third respondent from West to East near Perundurai old bus stand Road, the Bus bearing Registration No.TN-33-N-1052 belonged to the second respondent was driven by its Driver, the first respondent, from the opposite direction i.e., East to West in a rash and negligent manner and dashed against the Motor Bike, as a result the claimant and the rider of the Motor bike had fallen down and sustained grievous injuries. In connection with the accident, a case was registered by the Perundurai Police Station. For the injuries sustained in the accident, the claimant filed the claim petition claiming compensation of Rs.4,70,000/- (Rupees four lakh and seventy thousand only) under various heads such as Pain and Suffering, Permanent Disability, Transportation to hospital, Extra Nourishment and Medical Expenses.

4. The second respondent/Transport Corporation has filed the counter statement stating that the accident occurred only due to the rash and negligence driving on the part of the third respondent and therefore, the second respondent is not liable to pay any compensation to the claimant/appellant. The Corporation also denied the age, occupation and other personal details furnished by the claimant in the claim petition.

5. The fifth respondent/New India Assurance Company Ltd., also filed a counter statement stating that they are impleaded as an unnecessary party. There is no negligence on the part of the driver of the two wheeler and it is only due to the rash and negligent driving of the driver of the bus belonging to the corporation the accident had occurred.

6. The Tribunal after analysing the oral and documentary evidence placed before it has rendered a finding that the accident had occurred due to the rash and negligent driving of the driver of the bus belonging to the corporation. The Tribunal therefore computed the compensation payable to the claimant under various heads and awarded a sum of Rs.1,10,000/- (Rupees one lakh and ten thousand only) as compensation to the claimant. Aggrieved against the said award, the claimant/appellant has preferred this appeal.

7. In the grounds of appeal, the appellant has stated that when the negligence is fixed on the driver of the first respondent, the Tribunal ought to have awarded the entire compensation claimed by the appellant at Rs.4,70,000/- (Rupees Four lakh and seventy thousand only). It was further contended that the claimant was an Engineering Graduate and he was earning a sum of Rs.2,000/- per month at the time of accident. Due to

the accident, the claimant had sustained loss of income besides permanent disability which disabled him from earning. The further grievance raised in the appeal is that the disability sustained by the claimant and loss enjoyment of life has not been properly considered by the Tribunal. Further, Ex.P9, Medical Bills, which were issued by the Ganga Hospital Coimbatore, were disbelieved by the Tribunal and rejected the claim made by the claimant for medical reimbursement. In all, the grievance of the appellant is that the Tribunal did not properly consider the evidence adduced to show the age and income of the claimant and the expenses incurred by him for the medical expenses by the Tribunal and therefore he prayed for enhancement of the compensation awarded by the Tribunal.

8. Heard the counsel for the claimant/appellant and perused the records. On perusing the award passed by the Tribunal, it is observed that the Tribunal fixed the liability on the driver of the bus belonging to the Transport Corporation and it is not questioned by the corporation by filing an appeal.

9. The claimant claimed a sum of Rs.4,70,000/- as compensation. In order to substantiate the same, on his side, he examined himself as PW.1 and the Doctors were examined as PW.2 and 3. Ex.P5 is the Accident Register and based on the same, the Doctor had deposed that the injury No. 1 mentioned therein is a simple injury but the injury Nos. 2 and 3 are grievous in nature. PW2 further deposed that there are scare marks visible on the claimant indicating that he underwent a surgery. Further, PW.2 has also deposed that due to the injuries sustained in the leg, the claimant could not stand for a long time or fold his leg. He could not also walk for a long duration or drive two wheeler.. Therefore, the Doctor has given a certificate Ex.P13 certifying the disability of the claimant at 35%.

10. While verifying the Medical Bills Ex.P8, the Tribunal has observed that though one witness was examined with regard to issuance of the Medical Bills, it was observed that there is no documents in the form of receipt for having paid the amount. Hence, the Tribunal has not considered the bills as proper and genuine bills and disbelieved the same. Therefore, the Tribunal has awarded a sum of Rs.50,000/- for Medical Expenses as against the claim of Rs.1,10,800/-. While considering the disability also the tribunal has discussed that the appellant was at the age of 23 years, at the time of accident and as per Ex.P10 he was employed as Mechanic and Technician for which the said documents were produced based on which the Tribunal has fixed a sum of Rs.10,000/- as a loss of income. Thus, the Tribunal has awarded a total sum of Rs.1,10,000/- compensation to the claimant under the following heads:-

S.No	Heads	Amount
1	Medical Expenses	Rs.50,000/-
2	Loss of Income	Rs.10,000/-
3	Pain and Suffering	Rs.15,000/-
4	Permanent Disability	Rs.25,000/-
5	Loss of earning power	Rs.10,000/-
	Total	Rs.1,10,000/-

11. On the side of the appellant, it is vehemently argued that the claimant being a qualified Technician and Engineer lost his income due to the injuries sustained in the accident and it has not been properly considered by the Tribunal. Further it was argued by the appellant that when the Doctor has assessed his disability at 35%, the Tribunal has taken only 25% without any basis and it ought to have awarded compensation by resorting to multiplier method.

12. It is evident from the records that the claimant examined the Doctor, who has deposed that due to the injuries sustained by the claimant, he could not stand for a long time, walk long distance or fold his leg. The claimant was young in age, 23 years at the time of accident and the injuries sustained by him would have definitely disabled him from taking up his normal work and it would have adversely affected his earning prospectus. Therefore, this Court is of the view that for the purpose of awarding compensation, this is a fit case where multiplier method can be resorted to. In this context, useful reference can be made to the decision of the Honourable Supreme Court in (2017) 3 SCC 351 in the case (Sandeep Khanuja Vs. Atul Dande and another) and in the said case, adoption of multiplier method was emphasised. Similarly, in the other judgment reported in (2009) 6 SCC 121 in the case of (Sarala Verma (smt) and others Vs. Delhi Transport Corporation and another) for calculating loss of earning capacity of the injured person multiplier method was emphasised. Considering the above said Judgments, this Court is inclined to enhance the award passed by the Court below by re-calculating the amount awarded under various heads as follows:-

S.No	Heads	Amount
1	Medical Expenses	Rs.25,000/-
2	Loss of Income during the period of treatment = Rs.2000/- X 12	Rs.24,000/-
3	Pain and Suffering	Rs.10,000/-

S.No	Heads	Amount
4	Permanent Disability =4,32,000/20%	Rs.86,400/-
5	Loss of earning power 24,000 X 18%	Rs.4,32,000/-
	Total	Rs.5,77,400/-

13. In the result, the Judgement and decree dated 24.01.2005 made in M.C.O.P.No.114 of 2003 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Erode is modified and the second respondent corporation is directed to pay a total sum of Rs.5,77,400/- as compensation to the claimant/appellant, together with interest as awarded by the Tribunal. The Claimant is directed to pay additional Court fee for its enhanced amount. The Corporation is directed to deposit the amount as determined in this appeal together with interest, after adjusting amount, if any, already deposited. On such deposit, the claimant/ appellant is permitted to withdraw the entire amount, as determined in this appeal, with accrued interest. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

klt/ebsi

To

1. The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.

2. The Record Clerk,
VR Section,
High Court, Madras.

C.M.A.No.3547 of 2005

KJI (CO)
GN(20/12/2018)