

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 12.11.2018

DELIVERED ON 28.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2094 of 2010 and
CMA No.3592 of 2012 and
M.P.No.1 of 2012

In CMA No.2094 of 2010

Murthi Appellant/claimant/
Petitioner

Vs.

The Managing Director,
Karnataka State Transport Corporation,
K.H.Road,
Bangalore -27. Respondent/Respondent

In CMA No.3592 of 2012

The Managing Director,
Karnataka State Road Transport
Corporation Limited,
Central Division, K.H.Road,
Shanthi Nagar, Bangalore 560 027. Appellant/Respondent

Vs.

Murthy Respondent/Claimant

Prayer in CMA No.2094 of 2010 and CMA No.3592 of 2012: These Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.182 of 2008 dated 16.11.2009 by the Additional Subordinate Judge, Motor Accidents Claims Tribunal, Thiruvannamalai.

In CMA 2094 of 2010

For Appellant	: Ms.M.Malar
For Respondent	: Mr.K.B.Arul

In CMA 3592 of 2012

For Appellant : Mr.K.B.Arul
For respondent : Mr.F.Ferry Chellaraja

COMMON JUDGMENT

The appellant in CMA No.2094 of 2010, who is the claimant in MCOP No.182 of 2008 on the file of the Additional Subordinate Judge, Motor Accidents Claims Tribunal, Thiruvannamali has filed the appeal seeking enhancement of compensation awarded by the tribunal. Whereas, the appellant in CMA 3592 of 2012, who is the Managing Director, Karnataka State Road Transport Corporation, Bangalore has filed the appeal contending that the award passed by the tribunal is on the higher side.

2. The claimant filed the above MCOP No.182 of 2008 under Section 166 of the Motor Vehicles Act seeking compensation of Rs.10,00,000/- before the Additional Sub Court, Thiruvannamalai for the injuries sustained by him in the road accident that took place on 15.01.2008.

3. The case of the claimant in nutshell.

On 15.01.2008, the claimant was proceeding towards Thiruvannamalai from Chennai in his two wheeler bearing registration No. TV-09-M-8453. When he was nearing Melpappampatti Village on Thiruvannamalai-Tindivanam Road, a speeding bus bearing registration No. KA 01 F 8269 belonging to the respondent hit the two-wheeler, as a result of which the claimant sustained injuries all over his body. He was immediately rushed to the Government Hospital, Thiruvannamalai. According to the claimant, the rash and negligent driving of the driver of the bus bearing registration No.KA-01-F8269 was the cause of the accident and that therefore the respondent/ State Transport Corporation is liable to pay compensation to him for the injuries sustained by him. The further contention of the claimant is that he was aged 34 years on the date of the accident and was owning an auto and earned a sum of Rs.6,000/- per month.

4. The appellant/State Transport Corporation Limited filed a counter affidavit contending that the claimant alone was rash and negligent in driving his two-wheeler.

5. The Tribunal, after analysing the evidence on record, awarded a compensation of Rs.5,10,000/- together with interest at the rate of 7.5% per annum.

6. Aggrieved over the quantum of compensation, the claimant has filed the appeal in CMA 2094 of 2010 seeking enhancement of the compensation amount, whereas the respondent has filed the appeal in CMA 3592 of 2012 contending that (i) the compensation awarded by the tribunal is on the higher side and (ii) the negligence fixed by the tribunal on the driver of the respondent is wrong.

7. Mr.M.Malar, learned counsel appearing for the claimant (appellant in CMA 2094 of 2010) would contend that the driver of the respondent was rash and negligent in driving his vehicle and hit the claimant, due to which his left leg was amputated above the knee level. He would further contend that the permanent disability of the claimant is assessed as 80%, as evidenced by the permanent disability certificate Ex.P2 and that the compensation of Rs.5,43,600/- awarded by the tribunal is very meagre.

8. Per contra, Mr.K.B.Arul, learned counsel for the respondent (appellant in CMA 3592 of 2012) would contend that the quantum of award passed by the tribunal is on the higher side and the tribunal was also wrong in fixing the responsibility on the driver of the bus and that only the claimant was rash and negligent in driving his two-wheeler and hit the bus belonging to the appellant.

9. A perusal of the medical records shows that the claimant's left leg was amputated above the knee level and Doctor Ravindran has assessed the partial permanent disability as 80%. The claimant was hospitalized for more than 45 days. It is not disputed that the claimant was self employed and he was eking his livelihood by driving an auto. The monthly income of the claimant is fixed at Rs.3,000/- by the tribunal, which cannot be said to be on the higher side. However, as per the decision of the Constitution Bench of the Apex Court in National Insurance Company Vs. Pranay Sethi reported in 2017(2) TN MAC 601, 40% towards future prospects has to be added to the income of the claimant. Hence, the monthly income of the claimant is fixed as Rs.4,200/- (3200+1200=4200). The claimant, on account of the accident, has sustained permanent disability. Therefore, the multiplier method adopted by the trial court is perfectly in order and cannot be faulted with, in view of the decision of the Division Bench of the Honourable Supreme Court in Rajkumar Vs. Ajay Kumar and another reported in 2011(2) SCC 343, wherein, it has been held thus.

" 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.

Therefore, the Tribunal has to first decide whether there is any permanent disability and if so, the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the disability then there is no question of proceeding further and determining the loss of future earning capacity. But, if the Tribunal concludes that there is permanent disability, then it will proceed to ascertain its extent. After the Tribunal ascertains, the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

After adding future prospects to the income of the deceased, permanent disability and Loss of income is fixed as $(4200 \times 12 \times 17 \times 80\% = 6,85,440)$ Rs.6,85,440/-. As far as the compensation awarded under other Heads are concerned, the tribunal has infact fixed very low amount, especially, when the left leg of the claimant was amputated above the knee level.

10. Therefore, the revised Award is extracted as under.

Sl.No.	Heads	Amount
1	Permanent disability ($4200 \times 12 \times 17 \times 80 / 100 = 6,85,440$)	6,85,440
2	Loss of amenities	25,000
3	Pain and sufferings	1,50,000
4	Transportation	10,000
5	Extra nourishment	50,000
6	Attender's charges	15,000
7	Future Medical expenses	25,000
	Total	9,60,440

11. The tribunal before fixing the rash and negligence on the part of the driver of the bus, has analysed the entire evidence on record. All the observations made by the trial court in this regard are unassailable and does not warrant any interference by this court.

12. In the result,

(i) The appeal in CMA No.2094 of 2010 is allowed without costs and a compensation of Rs.9,60,440/- is awarded together with interest on Rs.9,35,400/- at the rate of 7.5% from the date of claim petition till the date of deposit. No interest is awarded towards future medical expenses. The claimant is directed to pay necessary court fee for the enhanced compensation amount.

(ii) The State Road Transport Corporation Limited is directed to deposit the enhanced award amount, less the amount already deposit, within a period of 4 weeks from the date of receipt of a copy of this order till the date of deposit. On such deposit being made by the respondent, the claimant is entitled to withdraw the same, after following the due process of law.

(iii) The appeal in CMA No.3592 of 2012 is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-V)

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To

Sub Assistant Registrar

1 . The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Thiruvannamalai.

2 . The Managing Director,
Karnataka State Road Transport
Corporation Limited,
Central Division, K.H.Road,
Shanthi Nagar, Bangalore 560 027.

+1 cc to Ms.M.Malar, Advocate, S.R.No.81646

+2 ccs to Mr.K.B.Arul, Advocate, S.R.No.81643, 81644

CMA.No.2094 of 2010 and
C.M.A.No.718 3592 of 2012 and
M.P.No.1 of 2012

MR (CO)
SSM(10/04/2019) .