



Additional District Judge, FTC No.IV, Tiruppur, Coimbatore. The appellant, who is the 2nd respondent in the Claims Tribunal filed this appeal seeking relief to set aside the award passed by the Claims Tribunal. In the Claims Tribunal, the respondent in the appeal is the claimant. The 2nd respondent is arrayed as the 1st respondent driver and the appellant is the 2nd respondent before the claims Tribunal.

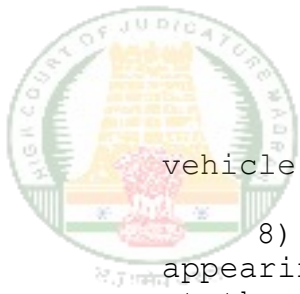
3) For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal.

4) The case of the claimant before the claims Tribunal is as follows. On 06.09.2005, at about 9.30 pm, when the claimant was travelling in a bus bearing Reg.No. TN 33 N 1417, owned by the 2nd respondent, the driver of the bus who is the 1st respondent drove the bus in a rash and negligent manner and when the bus was proceeded in Mettupalayam to Sirumugai Road, the 1st respondent without seeing the condition of the road, drove the bus in a dig. Due to the said accident, the passengers of the bus including the claimant sustained injuries. Immediately, the 1st respondent admitted the claimant in a Hospital for taking treatment. Further, for the said accident, the SHO, Sirumugai Police Station registered a case against the 1st respondent in Cr.No.283 of 2005 under Sections 279, 337 of IPC.

5) In a Hospital, a surgery was performed to the claimant on his Spinal cord. Even after completing the treatment, the claimant was not in a position to carry out his regular work. For the injuries sustained by him, the claimant filed the claim application under Section 186 of Motor Vehicles Act claiming the compensation of Rs.5,00,000/-. After elaborate enquiry, the Presiding Officer of the Claims Tribunal awarded a compensation of Rs. 6,11,824/- with interest at the rate of 7.5%. per annum, against which the 2nd respondent has approached this Court with this appeal.

6) On the other hand, opposing the claim of the claimant, by filing the Counter statement, the 2nd respondent disputed the claim of the petitioner about the age, avocation and income. Also, it is stated that the accident occurred only due to the negligence of the claimant. The 2nd respondent is not liable to pay any compensation. Thus, the 2nd respondent sought for dismissal of the appeal.

7) Before the Tribunal, the claimant has been examined himself as PW 1, the Doctor, who issued Disability Certificate and the person, who saw the occurrence were examined as PW 2 and PW 3 respectively. Further, on the side of the claimant, 6 documents were marked as Ex.P.1 to Ex.P.6. On the side of the respondent, the 1st respondent who is the driver of the offending



vehicle was examined as RW 1 and no documents were exhibited.

8) In respect to the negligence aspect, the learned Counsel appearing for the appellant / 2nd respondent would contend that at the time of accident, even after knowing the condition of the road, the claimant without holding the rods fixed in the bus casually seated in the bus. Only because of the said reason, at the time of occurrence, the claimant fell into the bus and sustained injuries.

9) Per contra, the learned counsel appearing for the claimant would contend that the passengers, who are travelled in the bus did not know the condition of the road. So it is the duty of the bus driver, to drive the vehicle, according to the conditions of the road. But, in this case the 1st respondent had not follow the said procedure and drove the bus in a dig.

10) Considering the either side submissions, it is an admitted fact that the alleged accident had happened on 9.30 pm in the night hours. So, it is impossible to see the condition of the road by the passenger, who are all travelled in the bus. It shows, only due to the negligent driving of the 1st respondent only, the accident had happened. When at the time of giving evidence as RW 1, the 1st respondent had stated that after the occurrence, he admitted the claimant in the Hospital. So, the presence of the claimant is also admitted by the respondent through the evidence of RW1. More than that, if a claimant is permitted to sit in the seat, there is no possibility to sustain injury on his spinal cord. On culling out the entire evidence given by the PW 1 and RW 1, it would clearly established that only due to the negligent driving of the 1st respondent, the occurrence had happened. Thereby, being the owner of the vehicle, the 2nd respondent/appellant is liable to pay the compensation determined in this case.

11) In respect to the quantum of compensation arrived at by the Claims Tribunal, it is to be noted that at the time of giving evidence, the claimant had stated that before the occurrence, he was doing a mill erection work in Tiruppur and was earning Rs.5,000/- per month. Even though, the said evidence is not supported through the salary certificate, the co-worker one Udayakumar (PW 3) has stated that as the claimant was working with him and he was earning Rs.5,000/-. Further, he has stated that after the accident, the claimant has not come back to the work place. Therefore, for fixing the monthly income of the claimant, the evidence given by the co-worker alone available. Further, the claims Tribunal has took Rs.4,500/- is an appropriate monthly income of the claimant and applying the multiplier 14, calculated the loss of income for 65% permanent partial disability as Rs.4,86,000/- . In this



regard, it is an admitted fact that the occurrence had happened on 07.09.2005. In the year 2008, in Syed Sathik Case, our Honourable Apex court had fixed the income of Rs.6,500/- per month as the income of the vegetable vendor. So, it is reasonable that the mill worker can earn Rs.5000/- per month in the year of 2005. So, I am of the considered view that the claimant is earning Rs.5,000/- per month through the mill work.

12) The Claims Tribunal calculated the compensation as per the multiplier method. In the said circumstances, it is necessary to see, whether the claimant had suffered any functional disability. In this regard, the Doctor who issued the Disability Certificate has been examined as PW 2, before the Calims Tribunal. He has stated that, after the accident, a portion of spinal bone of (L3 - L 6) have been removed. Further, the claimant is having a pain over the neck and the touch sensitive of both legs is decreased. According to him, the claimant is not in a position to attend his job as he was doing earlier. So the evidence given by the Doctor clearly established that the claimant sustained the functional disability. Therefore, calculating the loss of income through the multiplier method is an appropriate method for determination of the compensation. As already discussed, the monthly income of the petitioner is fixed as Rs.5,000/-. Further, as per Ex.A.2 Discharge Summary, the age of the claimant is 42 years. So the appropriate multiplier is 14. Based on the above factors, the compensation has to be calculated as follows.

$$\text{Rs.5,000} \times 14 \times 12 \times 60\% = 5,04,000/-$$

13) Further, in the claims Tribunal, the claimant produced the medical bills to the tune of Rs.76,394/- and Rs.37,430/- under Ex.P3 and Ex.P.4 respectively. On the side of the 2nd respondent, the genuineness of the medical bills have not been disputed before the Claims Tribunal. So the claimant is entitled to receive the entire amount spent towards medical expenses. Apart from that, the claims Tribunal allowed Rs.5,000/- towards pain and sufferings, Rs.5,000/- under the head of extra nourishment. Moreover, Rs.1,800/- is allowed under the head of transportation. Rs.200/- towards damage to clothing.



SL.NO	PARTICULARS	Awarded by the Tribunal	Awarded by this Court
		AMOUNT (IN.RS)	
1.	Towards Pain and Suffering	5,000.00	5,000.00
2.	Towards Extra nourishment	5,000.00	5,000.00
3.	Towards loss of Income	4,86,000.00	5,04,000.00
4.	Towards Transport to Hospital	1,800.00	1,800.00
5.	Towards damage to dress materials	200.00	200.00
6.	Towards Medical Bills Rs.76,394/-+37,430/-	1,13,824.00	1,13,824.00
Total		6,11,824.00	6,29,824.00

14) Accordingly, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.6,29,824.00/- The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. The Transport Corporation is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, if any within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made after collecting the Court fee for the enhanced compensation, the Tribunal is directed to transfer the said amount to the Bank account of the appellant through RTGS/NEFT within a period of one week.

15) In the result, the Civil Miscellaneous appeal is dismissed and the Cross Objection No.160 of 2010 filed to enhance the award amount passed by the Claims Tribunal is allowed. Consequently, the connected Miscellaneous petition is disposed off. There shall be no order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

vrn



To
The Motor Accident Claims Tribunal /
Additional District Judge, FTC No.IV
Tiruppur

WEB COPY

Copy to
The Section Officer
VR Section, High Court, Madras

+1 cc to Ma.P.Thangavel Advocate sr79520

Civil Miscellaneous Appeal No.687 of 2010
and
Cross.Objection.No.160 of 2010

ssi(co)
aa15/10/2019