

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.789 of 2011

Dhavasidhevar

...Appellant/Petitioner

Vs

1.The Managing Director,
Tamilnadu State Transport Corporation Limited,
Division 2 Salem 7.

2.State Express Transport Corporation Limited,
Chennai. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2010 made in M.C.O.P.No.37 of 2006 on the file of the Motor Accident Claims Tribunal - Salem, Principal Subordinate Judge, Salem.

For Appellant : Mr.K.Kuppusamy

For respondents: Mr.K.J.Sivakumar for R1 & R2

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 22.09.2010, passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge, Salem) in MCOP.No.37 of 2006.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The Appellant sustained injuries on 11.11.2005 while travelling as a passenger in a bus bearing Registration No.TN 01 N 6447, which collided with another bus bearing Registration No.TN 29 N 1633. The bus bearing Registration No.TN 01 N 6447 is owned by the first respondent and the bus bearing Registration No.TN 29 N 1663 is owned by the second respondent.

(ii)The Appellant preferred a claim against both the respondents before the Motor Accident Claims Tribunal in MCOP.No.37 of 2006, seeking a compensation of Rs.2,00,000/- for the injuries sustained by him as a result of an accident.

(iii)The Motor Accident Claims Tribunal by its Award dated 22.09.2010, in MCOP.No.37 of 2006, directed the respondents to pay the Appellant in the ratio of 50:50, the total compensation of Rs.67,000/- together with interest at 7.5% per annum from the date of claim till the date of realization.

3.Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4.Heard, Mr.K.Kuppusamy, learned Counsel for the Appellant and Mr.K.J.Sivakumar, learned Counsel for both the respondents.

5.According to the learned Counsel for the Appellant, the Appellant was an agricultural coolie earning a monthly income of Rs.5,000/- at the time of the accident. But the Tribunal has erroneously assessed the income of the Appellant as Rs.100/- per day which works out to only at Rs.3,000/- per month. Considering the year of the accident, which happened on 12.11.2005.

6.According to the learned Counsel for the Appellant, the Tribunal ought to have fixed the monthly income of the Appellant at the time of the accident as Rs.5,000/-. According to the learned Counsel for the Appellant, the Appellant sustained two fractures in his right leg and as an agricultural coolie, he was unable to perform his regular work and earn his livelihood.

7.Further, the learned Counsel for the Appellant would contend that the compensation awarded under various heads viz., transportation cost, extra nourishment, loss of amenities, pain and suffering and loss of income is also inadequate under the impugned Award. Further, he would submit that the lump sum awarded by the Tribunal for the disability suffered by the Appellant is also considerably low.

8.Per contra, the learned Counsel for the respondents would submit that the Appellant was 65 years old at the time of the accident and therefore, the quantum of compensation awarded by the Tribunal to the Appellant is a just compensation.

9.This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective Counsels observes the following:

(a)The respondents have not disputed the nature of injuries sustained by the Appellant before the Tribunal. Admittedly, the Appellant has sustained two fractures in his right leg.

(b)The Avocation of the Appellant has not been disputed by the respondents before the Tribunal. In the instant case, the Appellant was an agricultural coolie and he has sustained two fractures in his right leg. He would certainly have suffered loss of earning capacity as an agricultural coolie.

(c)Therefore, in the considered view of this Court, the lump sum compensation awarded by the Tribunal towards the Appellant's disability at Rs.30,000/- is an inadequate compensation and instead of that a sum of Rs.60,000/- will have to be awarded, calculated at the rate of Rs.2,000/- per percentage of disability, as in the instant case, the Appellant has suffered 30% disability.

(d)The compensation awarded to the Appellant towards transportation cost under the impugned Award is also inadequate and it is enhanced to Rs.5,000/- by this Court. The compensation awarded towards pain and suffering under the impugned Award is Rs.15,000/- which is enhanced to Rs.20,000/- by this Court.

10.In the result, the Award dated 22.09.2010, in MCOP No.37 of 2006, is enhanced by this Court in the following manner:

S.No.	Heads	Amount awarded by the Tribunal	Modified amount
1	For transportation	Rs.1,000/-	Rs.5,000/-
2	For extra nourishment	Rs.5,000/-	Rs.5,000/-
3	For medical expenses	Rs.5,000/-	Rs.5,000/-
4	For loss of amenities	Rs.5,000/-	Rs.5,000/-
5	For pain and suffering	Rs.15,000/-	Rs.20,000/-
6	For disabilities	Rs.30,000/-	Rs.60,000/-
7	For loss of income	Rs.6,000/-	Rs.6,000/-
	Total	Rs.67,000/-	Rs.1,06,000/-

11.In the result, the appeal is partly allowed by enhancing the compensation from Rs.67,000/- to Rs.1,06,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization. The respondents are directed to deposit Rs.1,06,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization in the ratio of 50:50, after deducting the amount already deposited, if any, to the credit of MCOP No.37 of 2006, on the file of the Motor Accident Claims Tribunal (Principal

Subordinate Judge, Salem), within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Appellant is permitted to withdraw the said sum by filing an appropriate application. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

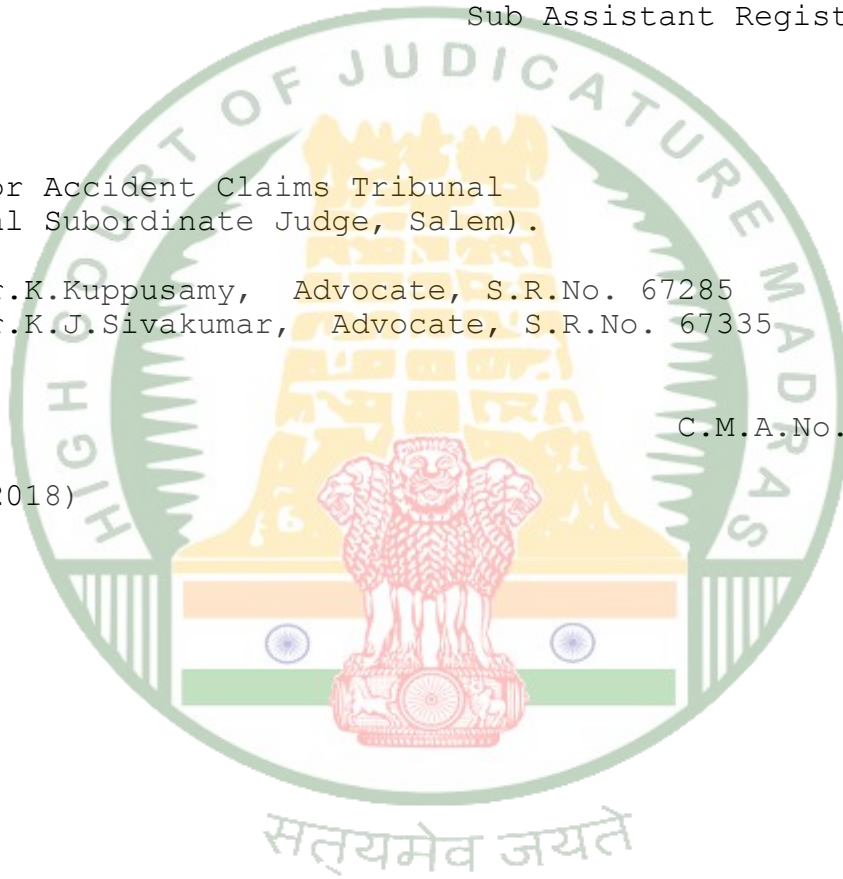
1.The Motor Accident Claims Tribunal
(Principal Subordinate Judge, Salem).

+1cc to Mr.K.Kuppusamy, Advocate, S.R.No. 67285

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No. 67335

C.M.A.No.789 of 2011

GJII(CO)
GN(01/11/2018)



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