

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1882 of 2017

M.I.Mohamed Zubair ... Appellant/Claimant

Vs

1.R.Balu

2.The Managing Director,
Tamil Nadu State Transport,
Corporation (Salem Depot), Salem. ... Respondents/Respondent

PRAYER : Civil Miscellaneous Appeal filed against the award and decree dated 20.07.2012 made in M.A.C.T.O.P.No.247 of 2010 on the file of the II Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.K.S.Karthik Raja

For Respondents: Mr.D.Venkatachalam

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimant aggrieved over the quantum of Rs.8,05,000/- awarded as compensation for the disability sustained by the claimant/appellant, due to the injuries suffered by him in the accident which occurred on 07.07.2007, when the claimant, a III year Civil Engineering student, who was riding his two wheeler, was hit by the Transport Corporation bus, driven rashly and negligently, coming from the opposite direction.

2.Heard, Mr.K.S.Karthik Raja, learned counsel appearing for the appellant and Mr.D.Venkatachalam, learned counsel appearing for the 2nd respondent.

3.The learned counsel for the appellant would submit that the claimant sustained amputation of his right leg above knee as proved by Ex.P.7 to Ex.P.10-Discharge summaries and Ex.P.23-

Disability Certificate, further fortified by the evidence of PW2-Doctor. PW2-Doctor categorically stated that there is amputation of right leg, pelvic fracture with perineal tear and hypovolemic shock. Therefore, the Tribunal was right in determining the disability at 80%. Having determined the disability at 80% that too based on the amputation of the leg of the claimant, the Tribunal should have adopted multiplier method to determine the loss of income, whereas the Tribunal erroneously awarded Rs.1,60,000/-, towards continuing disability @Rs.2,000/- per percentage of disability. This case requires adoption of multiplier method following the judgment of the Division Bench of this Court in Velusamy Vs. United India Insurance Company Limited, reported in 2005 (1) CTC 38.

4.The claimant was a 3rd year Engineering student in Tamil Nadu College of Engineering, Karumathampatti, Coimbatore, at the time of accident. The Division Bench of this Court in R.Harrish Vs. G.Divakaran and others, reported in 2014 (1) TN MAC 657 (DB), in similar circumstances, for amputation of leg of an Engineering college student, determined the monthly income at Rs.12,000/-. The accident in the referred case was on 04.04.2008, whereas the accident in the present case was on 07.07.2007. Therefore, this Court adopts the very same sum of Rs.12,000/- as monthly income as determined by the Division Bench of this Court in the above referred case.

5.For the age of 21 years, as proved by Ex.P.6 to Ex.P.10. Discharge summaries, Ex.P.17-Driving licence and Ex.P.27-Transfer certificate, the appropriate multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is "18". Therefore, the loss of income would be at Rs.20,73,600/- (Rs.12000/- x 12 x 18 x 80/100)

6.Transportation:

The Tribunal awarded a sum of Rs.5,000/- under this head. The Tribunal itself noted that the claimant was admitted in the hospital from 07.07.2007 to 20.08.2007; from 04.09.2007 to 10.09.2007 and from 31.05.2008 to 09.06.2008 and therefore, many times, the claimant was compelled to travel. Hence this Court enhances the same to Rs.50,000/-.

7.Extra nourishment:

The Tribunal awarded a sum of Rs.10,000/- under this head. For amputation, Rs.10,000/- is too low. Therefore, this Court awards a sum of Rs.50,000/- under this head.

8.Pain and suffering:

The Tribunal awarded a sum of Rs.30,000/- under this head. The same is enhanced to Rs.1,00,000/-.

9. Medical expenses:

The Tribunal awarded a sum of Rs.6,00,000/- under this head, based on Ex.P.11 to Ex.P.16. The same is confirmed.

10. Future Medical expenses:

Even though no amount was awarded by the Tribunal, this Court awards a sum of Rs.2,00,000/- under this head for fixing of artificial limbs.

11. Attendant charges:

No amount was awarded towards attendant charges. Therefore, a sum of Rs.25,000/- is awarded under this head.

12. Loss of marital prospects:

It is very difficult for a person with his leg amputated to get married. To put it in other words, the chances of getting married is bleak and therefore, this Court awards a sum of Rs.2,00,000/- under this head.

13. Loss of amenities:

No amount was awarded towards Loss of Amenities. Therefore, a sum of Rs.2,00,000/- is awarded under this head.

Head	Amount (Rs.)
Total loss of income	2073600
Transportation	50000
Extra nourishment	50000
Pain and suffering	100000
Medical expenses	600000
Future medical expenses	200000
Attendant charges	25000
Loss of marital prospects	200000
Loss of amenities	200000
Total	3498600

14. Hence, the total compensation payable in this case is Rs.34,98,600/- rounded off to Rs.35,00,000/-.

15. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

16. The Transport Corporation is directed to deposit the entire award amount as per the modified award passed by this Court, within a period of twelve weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is

directed to transfer the entire award amount along with interest and costs to the bank account of the claimant through RTGS within a period of one week thereon.

17.The claimant is directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall be automatically deleted. The necessity to include the above clause is only to see that the additional court fee is paid promptly, as many complaints are received from the registry stating that the claimants' counsel are not paying the additional court fee for the enhanced award amount and thereby delaying the copy being made ready, thereby preventing the insurance company or transport corporation to receive the order copy, so that they could file an appeal or act upon the order passed by this Court. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the Decree itself.

21.Accordingly, this appeal is partly allowed, enhancing the award of the Tribunal from Rs.8,05,000/- to Rs.35,00,000/- with interest. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The II Additional Subordinate Judge,
(Motor Accident Claims Tribunal)
Coimbatore.

+1cc to Mr.K.S.Karthik Raja, Advocate sr.no.48305

+1cc to Mr.D.Venkatachalam, Advocate sr.no.48442

C.M.A.No.1882 of 2017

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