

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1609 of 2018

B.Ganapathy

... Appellant/Petitioner

-vs-

Tamilnadu State Transport Corporation
(Villupuram) Ltd.,
Rep by its Managing Director,
No.3/137, Salamedu Vazhutha Reddy Post,
Villupuram Taluk, Villupuram District 605 401.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 08.02.2018 in M.C.O.P. No. 2702 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant : Mrs. Ramya V.Rao
for M/s.A.N.Vishwanatha Rao

For Respondent : Mr. J.Lokesh
for Mr.K.J.Sivakumar

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The claimant, who was favoured with an award for a sum of Rs.6,07,477.15 by the Tribunal for the injuries caused to him in the motor accident that occurred on 04.11.2010 has come up on appeal seeking enhancement. Since the Appeal is filed by the injured claimant, we are not going into the question of negligence or liability.

2. According to the claimant, he was a self-employed sculptor earning a sum of Rs.15,000/- per month. In proof of his avocation, he has produced Ex.P14, an identity card issued by the Ministry of Textiles (Handicrafts), and the Salary Certificate which was marked as Ex.P14. The Tribunal, however, fixed the income of the deceased at Rs.10,000/- adding 40%

towards future prospects, the Tribunal arrived at the monthly income for the purposes of calculation of dependency at Rs.14,000/-. The Tribunal has arrived at the annual loss of income at Rs.1,68,000/-.

3. The Tribunal, however, concluded that the loss of earning power would be only 10% and hence worked out the compensation under the head of loss of future earning power at Rs.2,85,600/- [Rs.1,68,000/- x 17 x 10/100]. It is this fixation of the percentage of disability, that is seriously challenged by Mrs.Ramya V. Rao, learned counsel appearing for the appellant/claimant. Taking us through the discharge summary, Mrs.Ramya V.Rao, would point out that there is a fracture of the right humerus, fracture of the both the bones in the right leg and fracture of the right elbow joint. She would also draw our attention to the fact that there is shortening of the limb on the right leg and movement of the right elbow is restricted to a great extent. She would submit that considering the avocation of the injured claimant namely a sculptor, the Tribunal erred in fixing the loss of earning power at 10%. Once the fact that there is a shortening of the right leg and the restriction on the movement of the right elbow are admitted, the Tribunal should have assessed the loss of earning power at a much higher percentage. From the evidence on record, we find great force in the submissions of the learned counsel for the claimant.

4. The Tribunal has accepted that there is a shortening of the right leg and serious restrictions on the elbow movement of the right hand. The claimant being a Sculptor would necessarily suffer a great deal of disability in doing his job, which requires considerable skill and movement on the right hand as well as the standing for a longer duration. Needless to point out that the shortening of one of the legs will cause considerable difficulty, if the person should stand for a longer time. It is also a common knowledge that as a sculptor, the claimant is required to use his right hand and if the movements of the right hand are restricted, it would make his job more difficult. We, therefore, fix the loss of earning power at 50% considering the avocation of the claimant coupled with the nature of injuries. We take the income of the claimant at Rs.8,000/- per month. Thus calculated, the loss of earning power would be Rs.8,000/- + 40% (Future prospects) x 12 x 17 x 50/100 = 11,42,400/-

5. The Tribunal has awarded a sum of Rs.10,000/- towards transportation. We find that at least 9 surgeries have been performed on the claimant due to the accident. The same would have involved extensive travelling for the purpose of treatment.

We, therefore, enhance the amount awarded under the head of transportation to Rs.25,000/-. We confirm the awards of the Rs.50,000/- towards extra nourishment, Rs.2,49,377.15 towards medical expenses, based on bills. The Tribunal has awarded a sum of Rs.30,000/- towards pain and suffering. Considering the period of treatment, the same is enhanced to Rs.50,000/-. The Tribunal has awarded a sum of Rs.1,80,000/- towards permanent disability and the same is sustained. The Tribunal has awarded a sum of Rs.22,500/- towards attender charges. Considering the period of hospitalization and the fact that there was a fracture in all the three major bones in the right leg, we are of the considered opinion that the claimant would have incurred more expenses towards attender charges. Hence we award a sum of Rs.50,000/- under the said head. The Tribunal has awarded Rs.10,000/- towards loss of amenities. We find that the said award is too low, considering the fact that there is a shortening of the limb and the claimant will have to live with it forever. The award under the head of loss of amenities is enhanced to Rs.50,000/-. No amount has been awarded towards future medical expenses. We award a sum of Rs.50,000/- towards future medical expenses.

6. In view of the above, the award of the Tribunal requires modification and the same is modified as follows:

S.No.	Heads	Amount
1.	Loss of earning power	Rs.11,42,400/-
2.	Transportation	Rs. 25,000/-
3.	Extra Nourishment	Rs. 50,000/-
4.	Medical Expenses	Rs. 2,49,377/-
5.	Pain and sufferings	Rs. 50,000/-
6.	Permanent Disability	Rs. 1,80,000/-
7.	Attender Charges	Rs. 50,000/-
8.	Loss of Amenities	Rs. 50,000/-
9.	Future Medical Expenses	Rs. 50,000/-
	TOTAL	Rs.18,46,777/-

7. For the foregoing reasons, the appeal is partly allowed. The award of the Tribunal is enhanced to Rs.18,46,777.00 with interest at 7.5% per annum from the date of petition till date of payment.

8. The Transport Corporation is directed to deposit the entire award amount with interest and proportionate costs within a period of 8 weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant is permitted to withdraw the same.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

jv
To

1. The Motor Accidents Claims Tribunal,
VI Judge, Small Causes Court,
Chennai.

2.Tamilnadu State Transport Corporation
(Villupuram) Ltd.,
Rep by its Managing Director,
No.3/137, Salamedu Vazhutha Reddy Post,
Villupuram Taluk, Villupuram District 605 401.

Copy to
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.K.J.Sivakumar, Advocate sr 74439.

CMA.No.1609 of 2018

RJI (CO)
SP(31/01/2019)

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