

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2018

PRONOUNCED ON : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1800 of 2009

Durairaj

.. Appellant

vs

Tamilnadu State Transport Corporation
(Villupuram Division-I) Ltd.,
rep.by its Managing Director,
Villupuram.

.. Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act to set aside the fair and decretal order dated 31.01.2008 made in M.C.O.P.No.2456 of 2002 on the file of the Motor Accident Claims Tribunal, (V Judge, Small Causes Court), Chennai.

For Appellant : Mr.S.Alex Raj for

M/s.A.Shanmugaraj

For Respondent : Mr.S.V.Vasantha Kumar

JUDGMENT

The appellant before this Court was the claimant before the Motor Accident Claims Tribunal Chennai, V Judge, Small Cases, Chennai.

2. By the present appeal, the appellant seeks for enhancement of the compensation awarded in the impugned fair and decretal order dated 31.01.2008 in M.C.O.P.No.2456 of 2002. (For brevity hereinafter referred to as the Tribunal and the impugned order respectively).

3. By the impugned order, the Tribunal awarded a sum of Rs.58,000/- together with interest at 7.5% from the date of the claim petition till the date of deposit.

4. The appellant submitted that he was a stone cutter and was hospitalised for a period of six months i.e. 12.06.2001 to 11.12.2001 as he suffered 45% disability on account of the injury to his legs in bus accident.

5. According to the appellant, the respondent's driver drove the bus in a rash and negligent manner and hit a stationary bus from behind and caused accident on 10.06.2001 at 8.00 p.m. The appellant was travelling as a passenger in the said TNSTC Bus bearing Reg.No.TN.32 N 1067 of the respondent. Due to the accident, the appellant and other passengers on board suffered injuries.

6. The appellant filed a claim petition before the Tribunal for a sum of Rs.2,00,000/- as compensation. The break up of the amount claimed before the Tribunal and the amount awarded by the Tribunal are as below:-

	Amount Claimed	Amount Awarded
Loss of earning income	Rs. 5,000/-	Rs. 10,000/-
Transport to hospital	Rs. 5,000/-	Rs. 1,000/-
Extra Nourishment	Rs. 5,000/-	Rs. 1,000/-
Medical Expenses	Rs. 10,000/-	Nil
Pain and sufferings	Rs. 20,000/-	Rs. 5,000/-
Compensation for continuing or permanent disability if any	Rs. 60,000/-	Rs. 45,000/-
Compensation for the loss of earning power	Rs. 95,000/-	Nil
Total	Rs.2,00,000/-	Rs. 58,000/-

7. Aggrieved by the order, the appellant has filed the present appeal.

8. Heard the learned counsel for the appellant and the respondent.

9. During the course of the hearing, the learned counsel for the appellant has filed a memo for further enhancement of compensation to Rs.6,43,560/- as detailed below:

Loss of earning during treatment	Rs. 18,000/-
Transport to Hospital	Rs. 10,000/-
Extra Nourishment	Rs. 5,000/-
Medical Expenses	Rs. 10,000/-
Pain and sufferings	Rs. 30,000/-
Permanent disability of 45%	Rs. 1,35,000/-
Loss of amenities	Rs. 50,000/-

Loss of earning during treatment	Rs. 18,000/-
Future loss of earning for 17 years	Rs. 3,85,560/-
Total	Rs. 6,43,560/-

10. Therefore, he submits that based on the evidence on record the compensation under the various heads can be enhanced as above.

11. The Power of the Court to award just compensation is well recognized. The Hon'ble Supreme court in **Nagappa Vs. Gurudayal Singh** (2003) 2 SCC 274 and in **Ibrahim vs. Raju and Others**, (2011) 10 SCC 634 has held that the Tribunals, the High Courts and the Supreme Court are duty bound to award just compensation to the claimants under Section 166 of the Act and if required the claimant can be permitted to file amendment to claim petition.

12. In the aforesaid decision, the compensation was enhanced from Rs.1,89,440/- to Rs.6,00,000/- .

13. In the present case, there is no dispute regarding the injury suffered by the appellant. However, there is no proper determination as to whether the injury suffered by the appellant resulted in a permanent total disablement or permanent partial disablement in terms of the decision of the

Hon'ble Supreme Court in **Raj Kumar v. Ajay Kumar**, (2011) 1 SCC 343.

14. The Tribunal in the present case has held that the injury had no impact on the earning capacity of the appellant. However, there is no basis to arrive at the above conclusion.

15. In para Nos.12 and 13, the Hon'ble Supreme Court in **Raj Kumar v. Ajay Kumar**, (2011) 1 SCC 343 has explained the modalities for determining the compensation. These paragraphs are reproduced below:-

“12. 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 permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent 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.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

16. The learned counsel for the appellant would submit that the nature of the injury was permanent total disablement and since as the appellant-claimant was a stone cutter he could not do hard physical work and prayed for enhanced compensation.

17. The respondent has not seriously contested the Ex.P.7-disability certificate given by P.W.2-Dr.Saichandran and therefore the learned counsel for the appellant submits that the compensation is to be enhanced to a sum

Rs.6,45,560 as against a sum of Rs.2,00,000/- originally claimed.

18. The learned counsel for the appellant relied on the following decisions of the Court:

- i) **Sarla Verma vs. Delhi Transport Corporation**, 2009(2) TN MAC 1 (SC)
- ii) **Ibrahim vs. Raju and Others**, (2011) 10 SCC 634
- iii) **National Insurance Co., Ltd., vs. Pranay Sethi & Others**, 2017(2) TN MAC 609(SC)

19. Per contra, the learned counsel for the respondent defends the impugned order and submits that the appellant is neither entitled to claim the amount of Rs.2,00,000/- as originally claimed nor Rs.6,43,500/- as is now being canvassed at the time of the hearing. He submits that the amount already awarded need not be further enhanced.

20. Having perused the order and exhibits, it is noticed that the enhanced compensation now canvassed by the respondent for Rs.6,43,000/- cannot be entertained straight away and awarded in a casual manner without proper explanation for the memo given during hearing even though the

powers of the court to higher compensation there. However, the appellant has to file an amended claim. He has merely filed a memo for enhancement of the claim without any other documents to substantiate the claim for enhanced compensation. Therefore, enhanced claim cannot be entertained.

21. Therefore, the present appeal will be decided on merits in the light of evidence on record taking note of the later decision of the Hon'ble Supreme Court cited by the learned counsel for the appellant.

22. Ex.P.3-O.P.Chit, Ex.P.4-Discharge Certificate, Ex.P.5-Discharge Summary, Ex.P.6, extract from the Discharge Book and Ex.P.7 Photo with negative and Ex.P.9 x-ray also shows the nature of injury. It is evident that the appellant has suffered grade III compound fracture of bones which incapacitates the ability to work as a stone cutter. Ex.P.7 photograph shows a deformity in the leg.

23. A stone cutter in a stone quarry is required to use physical strength to break stones and boulders. Appellant is a unskilled labour. Ex.P.7 and Ex.P.8 coupled with the deposition of P.W.2, makes it clear that the injury has permanently affected the legs and therefore impacts the earning capacity of

the appellant as a stone cutter.

24. Ex.P.8 -Disability certificate marked through P.W.2 has arrived at the disability of 45%. The respondent has also not seriously contested Ex.P.8 disability certificate. The Tribunal has awarded a sum of Rs.45,000/- only. Therefore, the amount awarded towards permanent disability is upheld.

25. It would be therefore, unfair to uphold the views of the Tribunal that the injury had no impact on the earning capacity of the appellant. Appellant cannot be expected work with physical handicapped as a stone cutter. Therefore, the conclusion that the appellant's earning capacity is not affected due to injury cannot be countenanced. Therefore, a just compensation ought to have been awarded to the appellant. Considering the overwhelming nature of the evidence on record I am inclined to enhance the compensation partially. सत्यमेव जयते

26. The appellant was aged 35 years and earning a sum of Rs.3,000/- p.m. as a daily labourer in stone quarry. Applying multiplier 16 the loss of income on account of permanent disability has to be reworked. The appellant is also additionally entitled to income towards future prospect in

view of the decision of the Court in **Pranay Sethi case**.

27. The appellant is entitled to Rs.1,03,800/- (Rs.3,000/-x 12x16x45/100) towards future prospect on the loss of income on account of permanent disability applying the ratio of the Hon'ble Supreme Court in **National Insurance co., Ltd., vs Pranay Sethi 2017 (2) TN MAC 609**. The appellant will be additionally entitled to the appellant **Rs.1,08,400/-**.

28. The amount awarded under the conventional heads appear to be meagre and liable to be partially enhanced. The Tribunal has awarded a meagre amount of Rs.1,000/- towards extra nourishment and Rs.5,000/- towards pain and suffering. They are enhanced to Rs.5,000/- and Rs.15,000/- respectively. The Tribunal has awarded only a sum of Rs.1,000/- towards transportation and is enhanced to Rs.3,000/-.

29. Therefore, the amount of compensation awarded under various heads are modified as follows:

Loss of Income 3000X12x45/100x16	Rs. 2,59,200/-
40% addition to loss of income on account of future prospect	Rs. 1,03,680/-
Rs.2,59,200/- x 40/100	

Medical expenses	Rs. 10,000/-
Transport to hospital	Rs. 3,000/-
Extra nourishment	Rs. 5,000/-
Pain and sufferings	Rs. 15,000/-
Permanent disability	Rs. 45,000/-
Total	Rs. 4,40,880/-

30. Further, the deposition of P.W.2 physician and Ex.P.8-permanent disability has also not been seriously contested by the respondent. While so, it would be unfair to not to award enhanced compensation to the appellant towards loss of income and addition of future prospect to income as per the decision of the Hon'ble Supreme Court in **National Insurance Co., Ltd., vs. Pranay Sethi and Others**, 2017(2) TN MAC 609 (SC).

31. Therefore, the civil miscellaneous appeal is partly allowed with the following directions:-

- i) The appellant/claimant is directed to pay the additional court fee for the enhanced award amount before the Tribunal.
- ii) The respondent/Transport Corporation is directed to deposit the above said amount of Rs.4,40,880/-after deducting the amount already paid / deposited before

C.SARAVANAN,J.

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the Tribunal together with interest at 7.5% from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of copy of this order.

ii) On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn. No cost.

12.10.2018

Index : Yes/No
Internet : Yes/No
Speaking : Non speaking order
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To

The Motor Accident Claims Tribunal
(V Judge, Small Causes Court), Chennai.

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Pre-delivery Judgment in
C.M.A.No.1800 of 2009