

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2823 of 2010

S.Murugan

..Appellant/Petitioner

Vs

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai, Chennai - 600 002. ..Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 15.09.2005 in M.C.O.P.No.4178 of 2000 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For Respondent : Mr.S.Sivakumar

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 15.09.2005, passed by the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai in M.C.O.P.No.4178 of 2000.

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

(i)The Appellant sustained injuries as a result of the accident caused by a bus bearing Registration No.TN 01 N 3417 owned by the respondent Transport Corporation.

(ii)The Appellant preferred a compensation claim before the Motor Accident Claims Tribunal in M.C.O.P.No.4178 of 2000, seeking a compensation of Rs.7,00,000/- for the injuries sustained by him as a result of the accident caused by the bus owned by the respondent Transport Corporation.

(iii)The Motor Accident Claims Tribunal in its Award dated 15.09.2005, passed in M.C.O.P.No.4178 of 2000, directed the respondent to pay the Appellant a sum of Rs.1,32,000/- together

with interest at 7.5% per annum from the date of claim till date of realization and also awarded costs.

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

4. Heard Mr. A. N. Viswanatha Rao, learned Counsel for the Appellant and Mr. S. Sivakumar, learned Counsel for the respondent.

5. The learned Counsel for the Appellant submits that the Appellant was an electrician at the time when the accident happened and due to the said accident, he is unable to carry on his regular work as an electrician.

6. The learned Counsel for the Appellant submits that since the bus ran over the right hand of the Appellant, the Appellant sustained fracture and grievous injuries. Considering the nature of the injuries suffered by the Appellant, the learned Counsel for the Appellant submits that the compensation awarded by the Tribunal under the impugned Award is not commensurate with the actual loss suffered by the Appellant as a result of the injuries caused to him due to the accident.

7. The learned Counsel for the Appellant would further contend that the Tribunal ought to have applied the multiplier method for assessing the compensation. Instead, the tribunal has applied compensation for the disability on percentage basis.

8. The learned Counsel for the Appellant further contends that the Tribunal has also not adequately compensated the Appellant towards transport cost, extra nourishment charges, attender charges, pain and suffering and loss of earning power, loss of amenities and towards disfiguration of limb.

9. The learned Counsel for the Appellant drew the attention of this Court to the following judgments of the Hon'ble Supreme Court:

(i) Rajan Vs Soly Sebastian and Others reported in 2015 AIR (SCW) 5352. In this case, the Hon'ble Supreme Court assessed the compensation at 100% loss of earning capacity even though the victim had suffered only 60% bodily injury. Relying upon the above referred judgment, the learned Counsel for the Appellant would further submit that in the case on hand, the Appellant has suffered fracture on his right hand and being an electrician, the compensation awarded by the Tribunal towards loss of earning capacity under the impugned Award is not commensurate with the actual loss of earning suffered by the Appellant.

(ii) The Second judgment relied upon by the learned Counsel for the Appellant in the case of S.Perumal Vs K.Ambika and Ors. reported in 2015(1)TN MAC 337 (SC), wherein the Hon'ble Supreme Court enhanced the compensation under all the heads in a case involving injuries/fracture sustained by the victim amounting to 25% disability.

(iii) The next judgment relied upon by the learned Counsel for the Appellant is the case of Sanobanu Nazirbhai Mirza and Others Vs Ahmedabad Municipal Transport Service reported in (2013) 16 Supreme Court Cases 719 wherein the Hon'ble Supreme Court for an accident relating to the year 1998, fixed the national income at Rs.5,000/-. The learned Counsel for the Appellant would point out that the case on hand, the accident took place in the year 2000, the Tribunal has fixed the national income at Rs.3,000/- per month.

(iv) The next judgment relied upon by the learned Counsel for the Appellant is the recent judgment of the Hon'ble Supreme Court Anant Son of Sidheshwar Dukre Vs Pratap Son of Zhamnappa Lamzane & Another passed in SLP (Civil) No.1159 of 2018, wherein the Hon'ble Supreme Court has held that in a case of fracture, multiplier method will have to be adopted. The relevant portion of the said judgment is found at paragraph 3.4 which is extracted hereunder:

"The MACT vide Order dt.07.02.2015 partly allowed the Claim Petition and granted Rs.7,00,000 as a lumpsum compensation payable jointly and severally by both the Respondents within one month along with Interest @ 7% p.a. on the compensation amount from the date of the Claim Petition till the date of realization. The MACT erroneously made a departure from the multiplier method, and granted a lump-sum amount as compensation. The tribunal did not grant compensation under various heads such as actual loss of income, future loss of income, medical expenses and compensation for permanent disability sustained". सत्यमेव जयते

9. According to the learned Counsel for the Appellant, the Tribunal has erroneously not applied the multiplier method but has granted only a lump sum amount as compensation for the disability suffered by the Appellant.

10. Per contra, the learned Counsel for the respondent would submit that only after considering the evidence available on record, the Tribunal has passed the impugned Award and therefore, no ground has been made out for enhancement of compensation.

11.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)It is an undisputed fact that the Appellant was an electrician at the time of the accident. There is no contra evidence produced by the respondent before the Tribunal to disprove the claim of the Appellant that he was an electrician.

(b)The injuries sustained by the Appellant is also undisputed by the respondent. Being an electrician and having sustained fracture in the right hand as a result of the accident, it would have certainly impaired him from doing regular work as an electrician. Admittedly, the Appellant was in the hospital for two months at Government Royapettah Hospital, Chennai from 13.01.2000 to 07.03.2000. Therefore, the injuries sustained by the Appellant was serious in nature.

(c)The Appellant before the Tribunal filed Nine documents which were marked as Exs.P1 to P9 which included the discharge summary, OP chits, FIR, photos and negative, disability certificate and the X-ray. The Appellant had also examined three witnesses on his side including himself and another injured Lalitha as well as the Doctor who issued the disability certificate confirming that the Appellant had suffered 50% disability as a result of the injuries sustained on the account of the accident.

12.The Appellant had made a claim for Rs.7,00,000/- before the Tribunal in M.C.O.P.No.4178 of 2000, but the Tribunal has awarded only Rs.1,32,000/- even though as seen from the exhibits marked on the side of the Appellant before the Tribunal will clearly reveal that the injuries sustained by the Appellant are serious in nature and the disability suffered is 50%. Further, the Tribunal has not applied the multiplier method for assessing the compensation considering the nature of injuries sustained by the Appellant.

13.As seen from the judgment of the Hon'ble Supreme Court in the case of Rajan Vs Soly Sebastian and Others reported in 2015 AIR (SCW) 5352, cited supra, considering the avocation of the Appellant, who is an electrician and the nature of the injuries sustained by him on his right hand, the Tribunal ought to have awarded higher compensation than what was awarded under the impugned Award.

14.The Appellant was 20 years old at the time of the accident. The Hon'ble Supreme Court in the case of Anant Son of Sidheshwar Dukre Vs Pratap Son of Zhamnnappa Lamzane & Another

in its recent judgment dated 21.08.2018, passed in SLP Civil Appeal No. No.8420 of 2018 has held that the multiplier method will have to be applied for assessing compensation and in that case a 29 year old man suffered fracture and 75% disability and the Hon'ble Supreme Court held following the judgment of the Hon'ble Supreme Court in Raj Kumar Vs Ajay Kumar reported in 2011(1)SCC 343 in a case permanent disability, the multiplier method for assessing the compensation will have to be applied. In the case on hand, the Appellant being an electrician who suffered fracture on his right hand, which resulted in his permanent disability to carry on with his avocation as an electrician, the Tribunal ought to have adopted the multiplier method for assessing the compensation towards loss of earning capacity.

15.In the light of the above observations, this Court is of the considered view that the compensation awarded under the impugned Award to the Appellant is inadequate and not commensurate with the actual loss suffered by the Appellant as a result of injuries caused by the bus owned by the respondent Transport Corporation.

16.In the result, the Award dated 15.09.2005 passed in M.C.O.P.No.4178 of 2000 is enhanced in the following manner:

	Impugned Award	Enhanced Amount
Loan of earning 13.01.2000 to 13.03.2000	Nil	Nil
Transport	Rs.1,000/-	Rs.5,000/-
Extra Nourishment	Rs.1,000/-	Rs.10,000/-
Medical Expenses	Nil	Nil
Future Medical Expenses	Nil	Nil
Attender Charges	Nil	Rs.10,000/-
Mental agony to the Petitioner	Nil	Nil
Mental agony to the Parents	Nil	Nil
Pain and suffering	Rs.30,000/-	Rs.30,000/-
Permanent disability	Rs.50,000/-	Removed
Loss of earning power: (Rs.3,000+F.P.40% 1200=4200 Rs.4,200x12x18x25/100=2,26,800)	Rs.50,000/-	Rs.2,26,800/-
Loss of amenities	Nil	Rs.10,000/-
Disfiguration of limb	Nil	Rs.10,000/-

	Impugned Award	Enhanced Amount
Total	Rs.1,32,000/-	Rs.3,11,800/-

17. In the result, the appeal is partly allowed by directing the respondent to pay the Appellant an enhanced compensation of Rs.3,11,800/- instead of Rs.1,32,000/- awarded by the Tribunal by its Award dated 15.09.2005, in M.C.O.P.No.4178 of 2000. The respondent is directed to deposit a sum of Rs.3,11,800/- after deducting the amount already deposited together with interest at 7.5% per annum on the enhanced difference in amount from the date of claim till date of deposit before the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes) at Chennai to the credit of M.C.O.P.No.4178 of 2000 within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the Appellant is permitted to withdraw the said sum by filing an appropriate application. No cost.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mtl/pam

To

1.The Motor Accident Claims Tribunal
(II Judge, Court of Small Causes) at Chennai.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+ 2 ccs to Mr.A. N. Viswanatha Rao, Advocate Sr.60195
+ 1 cc to MR. S.Sivakumar, Advocate Sr.59960

C.M.A.No.2823 of 2010

SR(CO)
EU(16/10/2018)