IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.01.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.No.2396 of 2006 and
C.M.A.No.2052 of 2006 and
M.P.No.1 of 2006 in
CMA.No.2052 of 2006

IN CMA No.2396 of 2006

Nedumaran ..Appellant(claimant)

..Vs..

The Managing Director,
Tamil Nadu State Transports
Corporation Limited,
Kumbakonam.
... Respondent/ Respondent

IN CMA No.2052 of 2006

The Managing Director,
Tamil Nadu State Transports
Corporation Limited,
Kumbakonam. ..Appellant/ Respondent

..Vs..

Nedumaran ... Respondent/Claimant

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment in MCOP.No.43 of 2003, dated 06.09.2005, on the file of the Motor Accidents Claims Tribunal, Subordinate Court,Tiruvarur.

CMA No.2396 of 2006

For Appellant : Mr.Srinath Sridevan
For Respondent : Mr.D.Venkatachalam

CMA No.2052 of 2006

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.Srinath Sridevan

COMMON JUDGMENT

The appellant in C.M.A.No.2396 of 2006 is the claimant in MCOP.No.43 of 2003, on the file of the Motor Accidents Claims Tribunal, Tiruvarur, while the appellant in C.M.A.No.2052 of 2006 is the Managing Director, Tamil Nadu State Transport Corporation, Kumbakkonam, the respondent in M.C.O.P.No.43 of 2003.

2.For the sake of convenience, the parties are called as mentioned in MCOP.No. 43 of 2003.

3.The brief case of the claimant is as follows:

On 02.01.2003, the claimant was riding his motorcycle TVS 50 bearing Registration No. TN 50 B 9241 on Nagapattinam - Chikkavalam Main road and at about 09.45 a.m., a speeding bus bearing Registration No.TN 49 N 0927 belonging to the respondent, hit the motorcycle, as a result of which, the claimant was thrown out of his motorcycle and sustained multiple injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the bus bearing Registration No.TN 49 N 0927 was the cause of the accident and therefore, the Tamil Nadu State Transport Corporation Limited, Kumbakkonam is liable to pay compensation to him.

4.The respondent, the Tamil Nadu State Transport Corporation Limited, Kumbakkonam contested the claim petition and the Motor Accidents Claim Tribunal after analysing the evidence on record, awarded a compensation of Rs.3,61,500/- together with interest at the rate of 9% per annum to the claimant.

5.Aggrieved over the quantum of compensation awarded by the tribunal, the claimant filed C.M.A.No.2396 of 2006 and the Tamil Nadu State Transport Corporation Limited, Kumbakkonam filed C.M.A.No.2052 of 2006 under Section 173 of the Motor Vehicles Act, 1988.

6.Mr.Srinath Sridevan, learned counsel appearing for the claimant would contend that the claimant sustained multiple fracture of bones on his right leg and was hospitalised for more than 50 days on three different occasions and 9 operations were also performed on his leg. His specific contention is that though the claimant's right leg is shortened by 10 inches and Dr. Amarnath chowdri (PW4) had assessed the partial permanent disability suffered by the claimant as 80%. The tribunal has awarded a very meagre amount of Rs.3,61,500/- as compensation to the claimant. It is contended that the claimant is a teacher by profession and on account of the accident is not able to stand continuously. His grievance is that the tribunal did not adopt multiplier method, especially, when

Dr.Amarnath Sowthri (PW4) had assessed the partial permanent disability as 80%.

7.Per contra, Mr.D.Venkatachalam, learned counsel appearing for the Tamil Nadu State Transports Corporation Limited would contend that the tribunal has awarded a just compensation of Rs.3,61,500/-, taking into consideration various aspects and the same need not be disturbed at this juncture.

8.A perusal of the Disability Certificate (P10) shows that the claimant has sustained the following injuries:

"Communitted fracture shaft of Right femur
SC fracture of Right Femur
Grade III, compound fracture Right leg"

9.Dr.Amarnath Chowdri (PW4) had assessed the partial permanent disability as 80%. It is also seen from the hospital records issued by St.Isabells Hospital that several operations were performed on Right leg of the claimant and he is a teacher by profession, which involves standing for a long time for teaching the students. The claimant was also aged just 30 years on the date of the accident. The Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 has held thus:

> "8.Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) loss of earning capacity to the extent (percentage) of permanent disability will result in award

of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of the court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010(8) SCALE 567).

9.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 a 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."

Applying the principles laid down in the above decision, multiplier method is adopted in the instant case.

10.The salary certificate(Ex.P18) shows that the claimant was earning a sum of Rs.7,500/- per month and was aged about 30 years on the date of the accident. After adding 40% towards future prospects, a sum of Rs.10,500/- is taken up for calculating loss of earning capacity. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation:

Income = Rs.7,500/-
40% Future Prospects = Rs.3,000/-
Total = Rs.7,500/- + Rs.3,000 = Rs.10,500/-

Loss of earning capacity
= Rs.10,500 /- x 17 x 12 x 80/100
= Rs.17,13,600/-

Apart from the said amount, the claimant is entitled to a sum or Rs.25,000/-, Rs.10,000/- and Rs.2,000/- towards 'pain and sufferings', 'extra nourishment' and 'loss of articles' respectively.

11.On account of the accident, the claimant would not have been in a position to attend to his regular work atleast for one year. Therefore, the claimant is entitled to a sum of Rs.90,000/- (Rs.7,500/- x 12) towards loss of income. The claimant has also adduced the medical bills to the tune of Rs.2,60,640/- which includes transportation and attender's charges. Therefore, a sum of Rs.2,60,640/- is awarded towards 'medical expenses', 'attender's charges' and 'transportation'. The various heads under which the award passed by this Court is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.17,13,600 /-
2.	Loss of income	Rs.90,000/-
3.	Medical expenses, transportation and attender's charges	Rs.2,60,640/ -
4.	Extra nourishment	Rs.10,000/-
5.	Loss of articles	Rs.2,000/-
6.	Pain and sufferings	Rs.25,000/-

S.No	Head	Amount granted
7.	Loss of amenities	Rs.20,000/-
Total		Rs.21,21,240 /-

Thus, the claimant is entitled to a sum of Rs.21,21,240/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12.In the result,

(i)The C.M.A.No.2396 of 2006 is allowed. No costs.

(ii)The C.M.A.No.2052 of 2006 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(iii)The quantum of compensation awarded by the tribunal is enhanced from Rs.3,61,500/- to Rs.21,21,240/-, which shall carry interest at the rate of 7.5% per annum.

(iv)It is made clear that the claimant is entitled to interest only at the rate of 7.5% per annum for the enhanced compensation amount of Rs.21,21,240/-.

(v) The claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(vi)The respondent, the Tamil Nadu State Transport Corporation Limited, is directed to pay the entire enhanced compensation amount (less the amount already deposited by them) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.43 of 2003, on the file of the Motor Accident Claims Tribunal, Tiruvarur within a period of four weeks from the date of receipt of a copy of this order.

(vii) On such deposit being made by the respondent, the claimant is at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(imp cell)

//True Copy//

Sub Assistant Registrar

vkr/mbi

To
The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruvarur.

2. The Managing Director,
Tamil Nadu State Transports
Corporation Limited,
Kumbakonam.

Copy to
The Section Officer,
VR Section,
High Court,Madras

+1cc to Mr.D.Venkatachalam , Advocate SR.No. 9352

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A.SK(11/07/2019)