IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.01.2019

CORAM
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.153 OF 2010

C.Raja ...Appellant/Petitioner

Vs.

1. Kuppusamy

2. The Managing Director
Tamilnadu State Transport Corporation Ltd.,
Coimbatore Division -2
Chinnimalai Road, Erode 2. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988, praying to fix the entire liability on the respondents and also for the enhancement of the compensation amount awarded in the Judgment and Decree dated 21.08.2009 made in M.C.O.P. N.o. 187 OF 2008 on the file of the Motor Accident Claims Tribunal / Additional District Court / Fast Track Court No.I, Erode.

For Appellant : Mr.N. Manokaran

For Respondents : Mrs. R.T.Sundari for R2.
R1 - No apperance.

JUDGMENT

The appellant is the claimant in M.C.O.P. No. 187 OF 2008 on the file of the Additional District Judge, Fast Track Court No.I, Motor Accident Claims Tribunal, Erode. He filed the above claim petition under Section 166 of Motor Vehicles Act, seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 17.09.2007.

2.The brief case of the appellant / claimant is as follows:

On 17.09.2007 the appellant / claimant was waiting at Erode Central Bus Stand to board a bus. When he attempted to board the bus bearing registration No.TN 33 N 1967 belonging to the second respondent, the driver of the bus (first respondent) took the bus rashly and negligently, as a result of which, the appellant / claimant fell down from the bus and sustained grievous injuries. According to the appellant / claimant, the rash and negligent driving of the driver of the second respondent was the cause of the accident and therefore, the second respondent is liable to pay compensation of Rs.6,00,000/- to him.

3.The learned Additional District Judge, Fast Track Court No.I, Motor Accident Claims Tribunal, Erode, after analysing the evidence on record awarded a compensation of Rs.2,21,000/-. However, the tribunal fixed 50% contributory negligence on the part of the appellant / claimant and reduced the compensation amount to Rs.1,10,500/-. The tribunal further directed the second respondent to pay the compensation of Rs.1,10,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit to the claimant. Not satisfied with the quantum of compensation awarded by the tribunal, the appellant / claimant has filed the present appeal under Section 173 of the Motor Vehicles Act.

4. Mr.N.Manokaran, Learned counsel appearing for the appellant would contend that, the appellant's left leg was amputated below knee level and that he was aged 45 years on the date of accident. He would further contend that the appellant / claimant was a mason by profession and was earning a sum of Rs.7,500/- per month. According to him, the appellant / claimant developed some complication while fixing the artificial limb and now he is walking with the help of two supporting sticks and he also produced the photographs of the appellant / claimant. His further contention is that when Dr.S.M.Duraisamy (P.W.2) has assessed the partial permanent disability as 80%, the tribunal has awarded a meagre sum of Rs.1,50,000/- and that the multiplier method was not at all adopted in the instant case. The award passed by the Tribunal under various heads is extracted hereunder:

Sl. No.	Head	Amount(Rs.)
1.	Pain and sufferings	50,000/-
2.	Transport and extra nourishment	10,000/-
3.	Medical expenses	1,000/-
4.	Permanent disability	1,50,000/-
5.	Loss of earning capacity	10,000/-
	Total	2,21,000/-

5. The appellant / claimant is a mason and this was not at all disputed by the respondent. A division bench of 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."

Since in the instant case the appellant / claimant's leg was amputated below knee level, adopting multiplier method is definitely warranted. As per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the proper multiplier to be adopted is 14 as the age of the appellant / claimant was 45 years on the date of accident. Since the appellant / claimant did not adduce any documentary evidence to prove his monthly income as Rs.7,500/-, notional income of the appellant / claimant is fixed as Rs.4,500/- per month. Thus the loss of earning capacity is calculated as Rs.6,04,800/- (Rs.4,500/- x 12 x 14 x 80%). Since the left leg of the appellant was amputated, he could not have been in a position to attend to his work atleast for one year and therefore, a sum of Rs.54,000/- (Rs.4,500/- x 12) is awarded towards loss of income. Apart from the above amount, the appellant / claimant is entitled to a sum of Rs.50,000/-, Rs.10,000/-, Rs.15,000/-, Rs.25,000/-, Rs.1,000/-, Rs.10,000/-, and Rs.10,000/- towards pain and sufferings, transportation, extra nourishment, loss of amenities, damage to cloths, attender charges and future medical expenses respectively. Hence, the first respondent/claimant is entitled to the following amount as detailed hereunder:

S.No.	Head	Amount granted (Rs.)
1.	Loss of earning capacity	6,04,800/-
2.	Loss of Income	54,000/-
3.	Pain and sufferings	50,000/-
4.	Transportation	10,000/-
5.	Extra Nourishment	15,000/-
6.	Loss of amenities	25,000/-
7.	Attender charges	10,000/-
8.	Damage to clothes	1,000/-
9.	Future Medical Expenses	10,000/-
	Total	7,79,800/-

6. The tribunal while fixing the contributory negligence on the part of the appellant / claimant did not consider the evidence on record in the proper perspective. In the instant case, the second respondent did not examine the driver of the vehicle, namely, the first respondent. Mr. Swaminathan (R.W.1) was said to be the conductor of the vehicle on the date of accident. According to R.W1, the bus was stopped in the central bus stand and all the passengers started boarding the bus one by one. The driver of the bus should have ensured that all the passenger have boarded / alighted the bus before moving the bus. Since the driver of the bus had failed in discharging his duties properly, the entire negligence is fixed on the driver of the vehicle and the second respondent should pay the entire compensation.

7. In the result,

(i) The appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.1,10,500/- to Rs.7,79,800/- (Rupees Seven lakhs Seventy nine thousand Eight Hundred only) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The second respondent is directed to deposit the enhanced compensation amount of Rs.7,79,800/- with accrued interests and costs, less the amount already deposited by them, within four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent, the appellant / claimant is entitled to withdraw the same after following due process of law.

(v) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount within two weeks from today.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

Additional District Judge,
Fast Track Court No.I,
Motor Accident Claims Tribunal,
Erode.

Copy To:

The Section Officer,
VR Section,High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.739

C.M.A.NO.153 OF 2010

RJI(CO)

rrs 09/01/2019