

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2225 of 2012

Pitchaimani

... Appellant/Plaintiff

.Vs.

The General Manager,
Tamilnadu State Transport Corporation,
Periya Milaguparai, Trichy. ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.02.2012 passed in M.C.O.P.No.197 of 2007 on the file of the Motor Accidents Claims Tribunal / Sub Court, Ariyalur.

For Appellant : Mr.P.Paramasivadass
for Mr.R.Gokulakrishnan

For Respondent : Mr.S.V.Vasanthakumar

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.197 of 2007 on the file of the Motor Accident Claims Tribunal / Sub Court, Ariyalur. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 27.02.2007.

2. The case of the claimant is that on 27.02.2007, at about 05.45 P.M., when he was riding his motorcycle bearing Registration No. TN 39 AL 3082 on Trichy - Kamparasampettai road, a speeding bus bearing Registration No. TN 45 N 1303 hit him, as a result whereof, he fell down and sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the bus belonging to the respondent / Tamilnadu State Transport Corporation was the cause of the accident and therefore they are liable to pay compensation.

3. The learned Subordinate Judge / Motor Accidents Claims Tribunal, Ariyalur, after analysing the evidence on record, awarded a compensation of Rs.1,16,300/- together with interest at the rate of 7.5% per annum to the claimant. Not

being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.P.Paramasivadass, learned counsel appearing for the appellant / claimant contended that though the claimant was a tailor by profession and had sustained multiple fractures and was also hospitalized for more than two months in Thanjavur Medical College Hospital, the Tribunal awarded a very meagre amount of Rs.69,000/- towards partial permanent disability, especially, when Dr.Kanmani (P.W.2) had assessed the partial permanent disability as 46%. He also contended that no amount was awarded under the head "pain and sufferings", "loss of amenities" and "loss of income" and therefore the compensation awarded by the Tribunal should be enhanced.

5. Per contra, Mr.S.V.Vasanthakumar, learned counsel appearing for the respondent / Tamilnadu State Transport Corporation contended that the Tribunal after considering all the aspects of the case has awarded a just compensation and therefore the same need not be disturbed at this stage.

6. A perusal of the discharge summary (Ex.P2) shows that the claimant had sustained the following injuries:

- (i) Trans. fracture shaft of femur right
- (ii) Undisputed fracture Lateral Condyle right femur
- (iii) Fracture of inferior pole right patella
- (iv) Fracture of temporal bone
- (v) Fracture of 5th rib
- (vi) Fracture of shaft of right femur

The records further shows that he was admitted as an in-patient in the hospital on 27.02.2007 and was discharged on 11.04.2007 and an operation was performed on 02.04.2007 for fixing plates and screws in the right shaft of femur bone. The Tribunal had awarded a sum of Rs.69,000/- towards partial permanent disability by granting a sum of Rs.1,500/- per percentage. In the decision in Rajkumar vs Ajaykumar and Another reported in 2011 (1) SCC 343 it has been held that where the claimant suffers permanent disability as a result of injuries, the assessment of compensation under the head loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity and that the Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. It is further observed that in most of the cases, the percentage of economic loss ie., percentage of loss of earning capacity arising from a permanent disability would be different from the percentage of permanent disability.

7. In the instant case, the appointment order (Ex.P6) shows that the claimant was a tailor by profession and he has sustained multiple fractures on his body and Dr.Kanmani (P.W.2) has assessed the partial permanent disability as 46% and further observed that there is a bone loss. By applying the principles laid down in Rajkumar vs Ajaykumar and Another reported in 2011 (1) SCC 343, cited supra, multiplier method has to be adopted in the instant case.

8. The contention of the claimant is that he was earning a sum of Rs.15,000/- per month as evidenced by the salary certificate (Ex.P7). It is pertinent to point out that the claimant did not examine the person who issued the salary certificate. Therefore, the notional monthly income of the claimant is fixed as Rs.7,500/-, since the accident took place in the year 2007. The age of the claimant is 33 years on the date of accident and therefore the proper multiplier to be adopted in the instant case is '16' as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since 46% partial permanent disability cannot be taken up as whole body disability, 20% disability is taken up for calculating loss of earning capacity. The loss of earning capacity is calculated as $\text{Rs.7,500/-} \times 12 \times 16 \times 20/100 = \text{Rs.2,88,000/-}$. On account of accident, he would not have been in a position to attend to his routine work atleast for six months and therefore the loss of income is calculated as Rs.45,000/- ($\text{Rs.7,500/-} \times 6 \text{ months}$). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.2,88,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Extra nourishment	Rs.10,000/-
4.	Transportation	Rs.27,300/-
5.	Attender's charges	Rs.5,000/-
6.	Damage to clothes	Rs.500/-
7.	Loss of income	Rs.45,000/-
8.	Medical expenses	Rs.10,000/-
9.	Loss of amenities	Rs.10,000/-
Total		Rs.4,15,800/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,16,300/- to Rs.4,15,800/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,16,300/- to Rs.4,15,800/-.

(iii) The appellant / claimant is directed to pay the additional court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order.

(iv) The Registry is directed to draft the decree only after the receipt of necessary Court fee.

(v) The respondent / Tamilnadu State Transport Corporation, is directed to deposit the enhanced compensation amount i.e., Rs.4,15,800/- (less the amount already deposited) 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.197 of 2007 on the file of the Motor Accidents Claims Tribunal / Sub Court, Ariyalur, within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

krk

To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Ariyalur.

+1cc to Mr.R.Gokulakrishnan, Advocate SR.No.63467

C.M.A.No.2225 of 2012

RSV (CO)

GMV (10/02/2020)