IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.2131 of 2013

Ramasamy ...Appellant/Petitioner

vs.

The Managing Director,
Tamil Nadu State Transport Corp. Ltd.,
(Salem Division),
12, Ramakrishna road,
Salem - 7.
... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.09.2011 passed in MCOP.No.536 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Salem.

For Appellant : Mr.D.Mouli
For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The appellant is the claimant in MCOP.No.536 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Salem. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.11,00,000/- for the injuries sustained by him in a road accident that took place on 03.07.2008.

2. The case of the claimant is that on 03.07.2008, at about 03.45 pm, when he was walking near new Salem bus stand, a speeding bus bearing Registration No. TN 27/N 1397 belonging to the respondent hit him, as a result of which, he sustained grievous injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the bus bearing Registration No. TN 27/N 1397 belonging to the respondent / Tamil Nadu State Transport Corporation Limited was the cause of the accident and therefore, they are liable to pay compensation to him.

3. The respondent / Tamil Nadu State Transport Corporation Limited contested the claim petition. The learned Motor Accident Claims Tribunal / Chief Judicial Magistrate, Salem after analysing the evidence on record, awarded a compensation of Rs.3,28,000/- together with interest at the rate of 7.5% per annum to the claimant vide his fair and decreetal orders dated 06.09.2011. Not 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.D.Mouli, learned counsel appearing for the appellant/ claimant contended that though the claimant was an agriculturist owning two and half acres of land and was also a businessman earning a sum of Rs.10,000/- per month, the Tribunal awarded a very meagre amount of Rs.90,000/- towards partial permanent disability, especially, when the claimant's right leg was amputated below knee level. His further contention is that the Tribunal had awarded very meagre amounts under other heads and therefore prayed for enhancement of compensation.

5. Per contra, Mr.D.Venkatachalam, learned counsel appearing for the respondent / Tamil Nadu State Transport Corporation Limited contended that the Tribunal after considering all the aspects of the case, had awarded a just compensation of Rs.3,28,000/- together with interest at the rate of 7.5% per annum and the same need not be disturbed at this stage.

6. In the claim petition, it is contended that the claimant was an agriculturist earning a sum of Rs.10,000/- per month. Since the accident is of the year 2008, a sum of Rs.7,500/- is fixed as notional monthly income of the injured. A perusal of the records shows that the right leg of the claimant was amputated below knee level and therefore adopting multiplier method is warranted in the present case as per the decision of the division bench of the Honourable Supreme Court of India in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. In paragraph nos. 9 and 10 of the said decision it has been held thus:

> "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.

10.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 ability (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. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation."

Since the appellant / claimant was aged 73 years on the date of the accident, the proper multiplier to be adopted in the instant case is 5 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Dr.Manimaran (PW2) had assessed the partial permanent disability as 60%. Since the partial permanent disability of 60% cannot be for the whole body, 40% is taken up as partial permanent disability. The "loss of earning capacity" is calculated as follows:

= Rs.7,500/- x 12 x 5 x 40/100
= Rs.1,80,000/-

7. 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.1,80,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Medical bills	Rs.2,10,432/-
4.	Transportation	Rs.10,000/-
5.	Extra nourishment	Rs.10,000/-
6.	Attender's charges	Rs.5,000/-
7.	Damage to clothes	Rs.500/-
8.	Loss of income	Rs.45,000/- (Rs.7,500/- x 6 months)
9.	Loss of amenities	Rs.10,000/-
Total		Rs.4,95,932/-

Thus the compensation awarded by the Tribunal is enhanced from Rs.3,28,000/- to Rs.4,95,932/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.3,28,000/- to Rs.4,95,932/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The respondent / Tamil Nadu State Transport Corporation Limited is directed to deposit the enhanced compensation amount i.e., Rs.4,95,932/- (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 MCOP.No.536 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Salem within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Salem.

copy to
The Section Officer
VR Section
High Court, Madras

+1cc to Mr.L.Mouli Advocate sr83576
+1cc to Mr.D.Venkatachalam Advocate sr83870

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