

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 18.03.2019]

[PRONOUNCED ON : 16.08.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.798 of 2012

V.Durai @ Duraisamy

... Appellant/Claimant

... Vs ...

1. K.S.Selvaraj
(Notice for R.1 dispensed with, since
R.1 ex-parte before the Tribunal)
 2. United India Insurance Company,
Divisional Office - 1,
104-A, Peramanur Main Road,
Salem - 7.
 3. The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
12, Ramakrishna Road, Salem - 7. [Given up]
- ... Respondents/Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act of 1988 as amended by Act 54 of 1994 against the order and decree passed in M.C.O.P.No.1639 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem, dated 23.12.2010.

For Appellant : Mr.C.Kulanthaivel
For R-1 : Ex-parte
For R-2 : Mrs.I.Malar
For R-3 : Given up

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JUDGMENT

Seeking enhancement of compensation, the claimant has filed this civil miscellaneous appeal dissatisfied with the award

dated 23.12.2010 passed by the Motor Accidents Claims Tribunal Principal District Judge, Salem, in M.C.O.P.No.1639 of 2007.

2 [i]. The short facts that are essential for the disposal of this appeal is that the appellant herein/claimant has preferred the claim petition in M.C.O.P.No.1639 of 2007 before the Motor Accidents Claims Tribunal, Principal District Judge, Salem, alleging that on 17.10.2007 at about 21.45 hours, the claimant was travelling in the TNSTC bus bearing Registration No.TN-29-N-1906 belonging to the third respondent from Krishnagiri to Salem and he was sitting in the centre of the bus on the right side and when the bus was nearing Deevattipatti burial ground, a Lorry bearing Registration No.TN-28-P-5496 belonging to the first respondent came from the opposite side in a rash and negligent manner and dashed on the side portion of the TNSTC bus and as a result of which, the claimant was crushed into the bus. Because of this accident, the claimant got fracture injuries on his right shoulder bone, right side hand knee, right side leg toe knee, skin tarred in right side hand, glass cut injuries in right side hand, skin tarred in right side leg toe and glass cut injuries all over the body.

2 [ii]. Immediately after the accident, the claimant was taken to Government Mohan Kumaramangalam Medical College Hospital, Salem, for treatment. The accident had occurred only due to the rash and negligent driving of the driver of the Lorry belonging to the first respondent. Since the claimant was travelling in the bus belonging to the third respondent, the third respondent was added as formal party. Respondent No.2 is the insurer of the Lorry. As against the driver of the Lorry bearing Registration No.TN-28-P-5496, Deevattipatti police has registered a criminal case in Crime No.398 of 2007 for the offence under Sections 279, 337 and 304(A) IPC. For the injuries sustained by him in the said accident, the injured/claimant has filed the above claim petition claiming a sum of Rs.7,00,000/- as compensation.

3. The third respondent herein/Transport Corporation has filed counter affidavit before the Tribunal stating that the accident had occurred only due to the rash and negligent driving of the driver of the Lorry belonging to the first respondent and hence, prayed for dismissal of the claim petition.

4. Before the Tribunal, on behalf of the claimant, the injured/claimant examined himself as P.W.1; Dr.Sridhar was examined as P.W.2 and documents Exs.P.1 to P.6 were marked. On the side of the respondents before the Tribunal, two witnesses

were examined as R.Ws.1 and 2 and no document was marked.

5. The Tribunal, after considering both oral and documentary evidence adduced on either side, has held that the accident had occurred only due to the rash and negligent driving of the driver of the Lorry bearing Registration No.TN-28-P-5496 belonging to the first respondent and awarded a sum of Rs.1,05,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs, as compensation to the claimant and directed respondents 1 and 2 herein to deposit the same. Further, the Tribunal had dismissed the claim petition insofar as respondent No.3 is concerned. Having not satisfied with the award passed by the Tribunal, the claimant has preferred this appeal before this Court seeking enhancement of compensation.

6. The factum of the accident, manner of the accident and rash and negligence on the part of the driver of the first respondent's Lorry are not in dispute and hence, the same are hereby confirmed.

7. On the point of quantum, both the parties were heard.

8. On a perusal of records, it is seen that the Tribunal had dismissed the claim petition insofar as third respondent/Transport Corporation is concerned and hence, the appeal is now confined to the owner of the Lorry/first respondent herein and the insurer of the Lorry/second respondent herein.

9. P.W.2-Dr.Sridhar could depose that based upon Ex.P.2-Wound Certificate, and Ex.P.3-Medical treatment note book, he had issued Disability Certificate under Ex.P.5 fixing the partial permanent disability at 55%. On a perusal of the above said documents, it is seen that due to the accident, the claimant has sustained the following injuries:

- "1) Fracture in right side shoulder bone
- 2) Fracture in right side hand knee
- 3) Fracture in right side leg toe knee
- 4) Skin tarred in right side hand
- 5) Glass cut injuries in right side hand
- 6) Skin tarred in right side leg toe
- 7) Glass cut injuries all over the body
- 8) Blood clotting in stomach
- 9) Heavy beet in hip
- 10) Heave beet in head
- 11) Heavy beet in chin
- 12) Lacerated injuries all over the body."

10. The claimant was admitted in the hospital and was given treatment as could be seen from Ex.P.3-Medical treatment note book. The Doctor P.W.2 could depose that due to the injuries sustained in the accident, right upper hand was fractured and there was a 50 degree restriction on the right hand shoulder and in the right elbow 30 degree restriction was noticed and there was a mal union of fracture at the foot and due to the accident, there was a difference in between left foot and the right foot and it is difficult for him to carry out the steel fencing in the construction activities and hence, based upon the oral evidence of P.W.2-Doctor coupled with the documentary evidence of Disability Certificate-Ex.P.5, this Court is of the considered view that the claimant had suffered functional disability and considering the whole body disability, the disability is fixed at 25%.

11. Based upon the above discussion, it is held that the essential criteria fixed by the Hon'ble Apex Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC, is being satisfied for adoption of the multiplier method. On the date of the accident, the injured/claimant was aged about 26 years and hence, as per the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC)], considering the age of the injured/claimant, multiplier of 17 has to be adopted. Since the claimant was working as a Grill compound contractor, he could have earned a sum of Rs.2,000/- at the time of the accident. Taking note of the fact that at the time of the accident, the injured/claimant was aged 26 years, following the judgment of the Honourable Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% of income has to be added towards future prospects. Accordingly, loss of income is calculated as follows:-

$$[Rs.2,000/- + Rs.800/- (40\% \text{ of } Rs.2,000) \times 12 \times 17 \times 25/100 = Rs.1,42,800/-].$$

12. The Tribunal has awarded a sum of Rs.50,000/- to the claimant towards pain and sufferings and the same is reduced to Rs.10,000/-. Further, this Court awards a sum of Rs.7,000/- towards extra nourishment. Since the claimant was taken treatment for 75 days as an inpatient, this Court awards a sum of Rs.10,000/- towards attender charges; a sum of Rs.10,000/- towards loss of amenities and a sum of Rs.4,000/- towards transportation. In all, the appellant herein/claimant is entitled to a sum of Rs.1,83,800/- as total compensation.

13. Accordingly, the award of the Tribunal stands modified as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of income	Nil	Rs. 1,42,800/-
2.	Permanent Disability and Loss of earning power	Rs.55,000/-	Nil
3.	Pain and Suffering	Rs.50,000/-	Rs.10,000/-
4.	Extra Nourishment	Nil	Rs. 7,000/-
5.	Attender charges	Nil	Rs.10,000/-
6.	Loss of Amenities	Nil	Rs.10,000/-
7.	Transportation charges	Nil	Rs. 4,000/-
	Total	Rs.1,05,000/-	Rs. 1,83,800/-

14. In the result,

I. This Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.1,05,000/- to Rs.1,83,800/-.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The second respondent-Insurance Company is directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit, the appellant herein/claimant is permitted to withdraw the enhanced award amount with proportionate interest, less the amount already withdrawn, if any.

V. The claimant shall pay necessary Court fee, if any, on the enhanced compensation.

VI. No order as to costs.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Salem.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate sr.69813

Judgment in

C.M.A.No.798 of 2012

sj (co)
nr 03/01/2020

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