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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2102 of 2016
and CMP.No.1182 of 2019

Antonio Fernando Alves Oliveria,
Rua Dos Morgados,
128, Paramos, 4500 530 Espinho,
Portugal.

... Appellant/Claimant

vs.

1.The Managing Director
Metropolitan Transport Corporation Limited,
(Chennai Division),
Pallavan House, Madras 2.

2.New India Assurance Limited,
Purasawalkam Branch,
Garden Apartments,
68, Purasawalkam High Road,
Purasawalkam,
Chennai 600 007.

3. D.Jhansilakshmi
(Respondents 2 and 3 remained exparte
before the MACT). ... Respondents /Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 to set aside the order and decretal order dated 09.01.2013 made in M.C.O.P.No.2253 of 2007, on the file of the Motor Accident Claims Tribunal(V Court of Small Causes) Chennai.

For appellant : Mr. Sarath Chandran

For R1 : Mr.S.S.Swaminathan



J U D G M E N T

(Judgment of the Court was delivered by C.SARAVANAN,J.)

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The appellant is aggrieved by the fair and decretal order dated 9.1.2013 in M.C.O.P.No.2253 of 2007 passed by the V Small Causes Court, Chennai acting as a Motor Vehicles Accident Claims Tribunal.

2. By the impugned order the tribunal has awarded a sum of Rs.1,22,500 as compensation together with interest at 7.5% per annum.

3. There was a delay in filing the appeal. The delay was condoned by this Court on 05.09.2016 in its order subject to condition that in case the appellant succeeds, he shall not be entitled to interest on the enhanced amount.

4. The facts relevant for the present case are briefly narrated hereunder.

5. Appellant a citizen of Portugal and an employee of the Philips Portuguese met with an accident while travelling in a car on 24.05.1997. The appellant was on an official visit to India. Bus belonging to the first respondent hit the car and as a result of impact he suffered injuries.

6. The appellant was rushed to the Royapettah Government Hospital for emergency treatment and thereafter shifted to Malar Hospital, Adyar. There he was operated.

7. The appellant thereafter got discharged from the hospital and appears to have taken treatment at Apollo Hospital, Chennai before he proceeded to Portugal for further treatment. Almost 10 years after the accident, a claim petition was filed before the Tribunal claiming a compensation of Rs.1.4 crores.

8. In the claim statement, the appellant claimed compensation on the following heads:-



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PART-I

a) Loss of earning from 24.06.1997 to 22.09.1998

at the rate of Rs.1,79,783.985
per month x 16 months

b) Partial Loss of earning

The petitioner was reverted to the lower cadre from purchase manager to commercial manager 23.09.1998 to 15.11.2003 62 months @

Rs.28,76,543.76

C) Transport to Hospital

Rs. 20,00,000.00

D) Extra Nourishment

Rs. 10,000.00

E) Damage to clothing and other article

Rs. 10,000.00

F) Expenses for treatment and medicines

Rs. 10,000.00

G) Future Medical Expenses

Rs. 1,56,000.00

PART-II

a) Compensation for pain and suffering

Rs. 2,00,000.00

b) Compensation for continuing permanent disability if any :

Rs. 1,50,000.00

c) Compensation for the loss of earning power

The petitioner was forced to accept voluntary retirement prior to months before superannuation due to the permanent incapacity, mental agony and disablement which are the consequences of this accident which amounts to 3154.105 Euros x19 months, (From 15.11.2003 to 25.07.2005)

Rs. 30,00,000.00

Rs. 34,15,896.00

d) Expenses incurred for treatments in India and after return to Portugal, as well as the expenses for trips to conduct the case

Rs. 2,00,000.00

e) Loss of job opportunity in other company or loss of promotion opportunity in the same company

Rs, 27,00,000.00

Total

Rs.1,48,18,439.76



9. The Tribunal after considering the evidence on record awarded a sum of Rs.1,22,500/-only as compensation as detailed below:-

1	Loss of income	Rs. 20,000/-
2	Permanent disability at 40% at Rs.1,800/- per percentage	Rs. 72,000/-
3	Extra nourishment	Rs. 5,000
4	Transport to hospital	Rs. 5,000/-
5	Damage to clothes	Rs. 500
6	Pain and suffering	Rs. 20,000/-
	Total	Rs. 1,22,500/-

10. The Tribunal has concluded that there was negligence not only on the part of the bus driver but also on the part of the car driven by the driver of the third respondent in which he was travelling when he met with the accident.

11. The Tribunal has however directed the first respondent Corporation alone to pay the aforesaid amount and has dismissed the case against second respondent the insurer of the car and the owner of the car involved in the accident.

12. Aggrieved by the said order, the appellant has filed the present appeal.

13. We have heard the learned counsel for the appellant and the first respondent. In the appeal, the appellant has only questioned the quantum of compensation awarded by the Tribunal.

14. In the appeal, the appellant has now filed a salary certificate dated 22.10.1998 wherein it has been stated that the appellant was receiving a monthly salary of Rs.4,50,584/- Escudoes and an additional daily fee of dollars 3,004 as subsistence allowance.



15. The Medical Board of Central Daude Region, Ministry of Health, Portugal by its certificate has assessed overall permanent incapacity of 70% susceptible of future variation which has to be re-evaluated.

16. The said certificate also declares that the appellant has "Permanent motor impairment that is proven to Hinder access to public transport".

17. The appellant has questioned the compensation awarded by the Tribunal wherein the appellant was assessed to a disability of 55% for fracture of both bone right forearm. It also records that the appellant had undergone treatment as an inpatient at the Malar Hospital, Adyar, Chennai where the surgery was conducted and implants were fixed and that the moment of right elbow was restricted to 90 degree and that the appellant would find difficulty in doing his day to day work.

18. The Tribunal has observed that the appellant had not filed the discharge summary issued by Malar Hospital and that the P.W.2 who had deposed evidence had not given treatment to the appellant for last 15 years but has assessed the disability to 55%.

19. The Tribunal has awarded a sum of Rs.1800/- as compensation though evidence was produced to show that the appellant was earning a sum of Rs.179,783.98 p at that point of time. There is however no clarity in the appeal filed by the appellant while seeking for enhancement.

20. The Court below has disbelieved that ExP.5 which is a copy of the ledger on the ground that the income of the petitioner has not been proved through any supportive evidence and the exact number of days of treatment of injury and number of days and the loss of income has not been proved. In the appeal also this aspect has not been explained.

21. We have given careful consideration to the case and the documents which were filed to substantiate the income and the injury. There is no discussion as to how a sum of Rs.20,000/- has been awarded towards loss of

income. Similarly, disability has been worked out at 40% on Rs.1800/- without any basis.



22. The Additional Documents which have been now filed before the Court seems indicate that the appellant had suffered permanent incapacity of 70% susceptible of future variation and permanent motor impairment which hinders access to public transport system.

23. It has not given the impact on the earning capacity. As per the decision of the Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar and Anr. [(2011) 1 SCC 343. In paragraph-12, the Hon'ble Supreme Court has observed as under:-

"12. Therefore, 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 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.

24. The nature of accident and injury suffered by the appellant shows that the Tribunal committed an error in awarding a meager compensation towards permanent disability at Rs.72,000/-. Needless to further state that the quality of life would have been compromised on account of the accident. We however do not find sufficient grounds to award higher compensation as claimed. We are therefore inclined to partially increase the compensation.



25. At the time of the accident in the year 1997, the appellant was 43 years. 22 years have gone by since the accident. The appellant would be now aged around 64 years and would have retired from active services.

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26. Therefore, we do not wish to remand the case back for fresh consideration to the Tribunal. Had the Tribunal referred the appellant to the Medical Board and ascertained the impact of the injury on the earning capacity, the amount of compensation to be awarded would have been easily determined. However, this was not done. Further as per the decision of the Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar and Anr. [(2011) 1 SCC 343. Raj Kumar case, 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 is to be established. 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."

27. Considering the fact that the appellant had undergone surgery and there are implants to his hands, we are inclined to increase the medical expenses to Rs.2,00,000 even though the records are not available as admittedly the appellant was operated at Malar Hospital as an inpatient and was thereafter shifted to Apollo Hospital before he returned to Portugal for further treatment.

28. The amount awarded towards permanent disability at Rs.72,000/- appears to be low considering the above reasons. We are inclined to therefore increase the same to Rs.1,00,000/-. Since the medical certificate now filed shows that there is permanent motor impairment, we are inclined to increase the amount awarded towards pain and suffering and extra nourishment to Rs.2,00,000/-.

29. At the same time the Tribunal has awarded a sum of Rs.20,000/- towards loss of income. However, from the records filed by the appellant himself seems to indicate that he has been given additional subsistence allowance fee of dollars 3004. Therefore, we find no reasons to award loss of income though.



30. Under these circumstances, the compensation awarded is modified as follows:

2	Permanent disability	Rs. 1,00,000/-
3	Medical expenses	Rs. 2,00,000
4	Transport to hospital	Rs. 5,000/-
5	Damage to clothes	Rs. 500
6	Pain and suffering, extra nourishment	Rs. 2,00,000/-
	Total	Rs. 5,05,500/-

31. Thus, the impugned order is modified and the compensation of Rs.1,22,500/- awarded by the Tribunal is enhanced to Rs.5,05,500/-.

32. However, while condoning the delay in filling the appeal, this Court by its order dated 05.09.2016 had stated that in case the compensation award is enhanced, the appellant shall not be entitled for the interest of enhanced compensation. Therefore, the appellant shall be entitled to differential compensation without any interest.

33. In the result, it is ordered as follows:-

i) The Civil Miscellaneous Appeal is partly allowed.

ii) The first respondent/Transport Corporation is directed to deposit the above said amount of Rs.5,05,500/-. The appellant is entitled to interest at 7.5% p.a. from the date of claim petition till the date of payment of Rs.1,22,500/- .

iii) The 1st respondent shall deposit the enhanced award amount to the credit of M.C.O.P.No.2253 of 2007 on the file of V Court of Small Causes,



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Chennai, within a period of eight weeks from the date of receipt of a copy of this order.

iv) On such deposit, the appellant-claimant is permitted to withdraw the above said amount along with accrued interest at the time of withdrawal. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kkd
To

The V Judge,
Court of Small causes,
Motor Accident Claims Tribunal,
Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

1cc to M/s.Govind Chandrasekhar, Advocate Sr.22273
+1cc to Mr.S.S.Swaminathan, Advocate Sr.21938

C.M.A.No.2102 of 2016
and CMP.No.1182 of 2019

srg 22/10/2019