

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.484 of 2013

P.B.Surendhar

... Appellant/Petitioner

..Vs..

Metropolitan Transport Corporation
Limited, Rep by its Managing Director,
Pallavan Salai, Chennai 2.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 31.12.2007 in M.C.O.P.No.4101 of 2002 on the file of the Motor Accidents Claims Tribunal, Fast Tract Court No.I, Chennai.

For Appellant : M/s.A.N.Viswanatha Rao
Ramy.V.Rao

For Respondent : Mr.K.Natarajan

JUDGMENT

The appellant is the claimants in M.C.O.P.No.4101 of 2002, on the file of the Motor Accident Claims Tribunal, Fast Track Court No.I, Chennai. He filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,55,000/- for the injury sustained by him in a road accident that took place on 14.07.2001. He was riding his two wheeler bearing Registration No.TN 20 X 6208 in Sengundram road from east to west direction and he was traveling in a wrong direction.

2.At that time, a speeding bus bearing Registration No. TN 01 N 3576 belonging to the Metropolitan Transport Corporation Limited, hit him, as a result of which, he sustained grievous injuries all over her body. It is further contented by him that the rash and negligent driving of the driver of the bus bearing Registration No. TN 01 N 3576 was the cause of the accident and therefore, the Metropolitan Transport Corporation Limited is liable to pay compensation to him.

3.The Metropolitan Transport Corporation Limited contested the claim petition and Fast Track Court No.I, Chennai after analysing the evidence on record, fixed the negligence on the part of the driver of the bus bearing Registration No. TN 01 N 3576 belonging to the respondent and awarded a compensation of Rs.4,64,810/- together with interest at the rate 9% per annum to the claimant.

4.The Compensation awarded by the Tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Permanent disability	Rs.1,00,000/-
2.	Transportation	Rs.10,000/-
3.	Extra Nourishment	Rs.30,000/-
4.	Pain and sufferings	Rs.1,00,000/-
5.	Medical expenses	Rs.2,07,130/-
6.	Loss of Income	Rs.17,680/-
Total		Rs.4,64,810/-

5.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, seeking enhancement of compensation.

6. M/s.Ramya Rao, learned counsel appearing for the appellant has filed a memo, which consist of the details of the amount awarded by the Tribunal and the enhancement required in the same. His specific grievance is that the Tribunal has not adopted multiplier method, especially, when Dr.Sai chandran (PW2) had assessed the disability as 65%. She fairly advanced the arguments that the functional disability may be fixed as 20%.

7.Mr.K.Natarajan, learned counsel for the respondent submits that the functional disability may be fixed around 20% but not more than 20%.

8.A perusal of the Discharge Summary (Ex.P3) shows that the claimant has sustained the following injuries:

"Ribs Fracture piercing lungs,
Left side hip fracture,
Right side long thigh bone fracture
Injury behind the shoulder
Rods placed in the thigh,
plate fixed in hip bone."

Considering the nature of injuries, the submissions of both the counsels, this Court is inclined to reduce the functional

disability as 20% from 30% as fixed by the Tribunal

9. Dr. Sai Chandran (PW2) had assessed the disability as 65%. The claimant was also aged just 37 years on the date of the accident. The Tribunal awarded a sum of Rs.1,00,000/- lumpsum compensation for the permanent disability. The Tribunal has not provided any reason for fixing the lumpsum compensation of Rs.1,00,000/-, when the injured sustained 65% disability. Therefore, the method of awarding the compensation towards the permanent disability fixed by the Tribunal is not proper. It is squarely against the well settled law by the Hon'ble Apex Court. Even the second schedule to the Motor Vehicles Act, which provides for compensation for the victims, though the claimants filed under Section 166, wherein even for the 10% of the disability, the compensation arrived on the basis of applying the multiplier. Therefore, it would be appropriate to apply the same principle in the present case and accordingly, this Court is inclined to award the compensation for the permanent disability by applying the multiplier method. This Court has taken the functional disability as 20% for the purpose of determining the compensation by applying the multiplier method. The proper multiplier to be adopted in the instant case is 15 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Loss of earning capacity

$$= \text{Rs.}9,500 \text{ /-} \times 15 \times 12 \times 20/100$$

$$= \text{Rs.}3,42,000 \text{ /-}$$

10. The Tribunal has awarded a sum of Rs.1,00,000/- towards permanent disability is not proper and this Court set aside the same. The Tribunal has awarded a sum of Rs.10,000/-, Rs.30,000/- and Rs.2,07,130/- towards transportation, extra nourishment and medical expenses respectively are confirmed by this Court. The amount awarded a sum Rs.1,00,000/- towards pain and sufferings is too high and the same is reduced to Rs.50,000/-. However, the Tribunal failed to award any amount towards loss of amenities and future medical expenses and therefore, a sum of Rs.50,000/- and Rs.25,000/- are awarded towards loss of amenities and future medical expenses respectively. This Court is not inclined to award any amount towards loss of expectation of life. Thus, the revised compensation awarded by this court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of earning capacity	Rs.3,42,000/-
2.	Loss of income	Rs.57,000/-
3.	Transportation	Rs.10,000/-

S.No.	Head	Amount granted
4.	Extra Nourishment	Rs.30,000/-
5.	Medical Expenses	Rs.2,07,130/-
6.	Attender's charges	Rs.10,000/-
7.	Pain and sufferings	Rs.50,000/-
8.	Loss of amenities	Rs.50,000/-
9.	Future medical expenses	Rs.25,000/-
Total		Rs.7,81,130/-

Thus, the appellant/claimant is entitled to a sum of Rs.7,81,130/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11.In the result,

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

(ii)The compensation awarded by the Tribunal is enhanced from Rs.4,64,810/- to Rs.7,81,130/-, which shall carry interest at the rate of 7.5% per annum.

(iii)The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv)The Metropolitan Transport Corporation Limited, is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-

सत्यमेव जयते
Assistant Registrar(Insp cell)

//True copy//

Sub Assistant Registrar

vkrr

To
The Motor Accidents Claims Tribunal,
The Fast Track Court No.I,
Chennai.

+1cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.14992

+1cc to Mr.K.Natarajan, Advocate SR.No.14873

C.M.A.No.484 of 2013

GJ(CO)
GMY(03/06/2019)



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