

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.37 of 2018
and CMP.No.259 of 2019

S.Adaikkappan Appellant/Petitioner

vs.

- 1.The Managing Director,
Tamil nadu State Transport Corporation,
Villupuram.
- 2.A.Shanmuga Sundara @ Shanmugam
3. National Insurance Company,
No.62 A, Jawaharlal Nehru Street,
Pondicherry-1. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 to set aside the order and decretal order passed dated 07.10.2016 made in M.C.O.P.No.55 of 2011, on the file of the Motor Accident Claims Tribunal(Sub Court) Panruti.

For appellant : Mr.K.M.Ramesh

For R1 : Mr.K.J.Sivakumar

For R2 : No Appearance

For R3 : Mr.P.Sankaranarayanan

J U D G M E N T

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

The appellant is aggrieved by the impugned fair and decretal order dated 7.10.2016 In M.C.O.P. No. 55 of 2011 passed by the Motor Accident Claims Tribunal, Sub Court, Panruti.

2. By the impugned order, the Tribunal has awarded a sum of Rs.13,68,550/- together with interest to the appellant.

3. The appellant met with an accident when a bus driven in a rash and negligent manner by the driver of the 1st respondent hit the motor cycle borne appellant and crushed his legs. The petitioner's right leg was amputated thereby permanently disabling him.

4. The appellant was aged about 23 years at the time of accident was a final year student studying in Engineering in V.R.S College of Engineering And Technology, Villupuram.

5. Aggrieved by the order of the Tribunal, present appeal has been preferred for enhancement of the compensation.

6. Before the Tribunal, the appellant claimed a compensation of Rs.1 crore. By this appeal, the appellant seeks for enhancement of the compensation to Rs.1 crore.

7. We have heard the learned counsel for the appellant and the 1st respondent and have perused the impugned order and the records forming part of the appeal and the evidence produced before the Tribunal.

8. The Tribunal has awarded a sum of Rs.13, 68, 550 /- to the appellant. This is a case where a young under Graduate riding a motorcycle met with an accident on account of the negligence of the driver of the 1st respondent and suffered serious injury resulting in amputation of the right leg.

9. The appellant's quality of life has been compromised drastically for ever. The evidence show disability has been assessed to be 80%. The Tribunal has calculated the loss of income on a notional income of Rs.15,000/ and has awarded compensation on the following heads:-

1	Permanent disability (Rs.15,000/- X 17X80%)	Rs.2,04,000/-
2	Pain and suffering	Rs.50,000/-
3	Medical expenses	Rs.11,600
4	Transport to hospital	Rs.10,000/-
5	For education loss	Rs.40,000/-
6	Extra nourishment	Rs.,15,000/-
7	Attendant expenses	Rs.10,000/-
8.	For the loss of his marriage in the future	Rs.50,000/-
9.	Loss of earning capacity	Rs.2,00,000/-
10.	Expenses for Artificial leg	Rs.5,01,050/-
11.	For the loss of future expectation of life	Rs.2,00,000/-
12.	For artificial leg maintenance	Rs. 76,900
	Total	Rs. 13,68,550/-

10. The amount awarded towards permanent disability, loss of education and loss of quality of life deserves to be increased.

11. The Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar and Anr. [(2011) 1 SCC 343] has given guidelines for computation of compensation for permanent disability. Para 14 reads 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. 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."

12. Though not cited, as per the decision of the Hon'ble Supreme Court in V. Mekala vs M. Malathi & Anr, 2014 (2) TANMAC 6 (SC) the Hon'ble Supreme Court awarded a sum of Rs.22,68,000 $[10,000/- \times 70/100 + 10,000 \times 70/100 \times 50/100) \times 12 \times 18]$ to a class XI student. There the claimant had suffered 70% disability. The Court also awarded amounts towards future prospect apart from other conventional heads.

13. We are required to see whether the Tribunal has awarded just compensation to the appellant. The amount awarded a sum of Rs.13,68,550/- is very low and therefore, required to be interfered with the Tribunal has not awarded as just compensation. In the facts of the case, we feel ends of justice will be met, if the compensation is enhanced as follows:-

S.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Permanent disability future prospect+ 50%.	Rs.15,000/- X 17X80%) Rs.2,04,000	Rs.6,00,000
2	Pain and suffering	Rs. 50,000	Rs. 1,00,000
3	Medical expenses	Rs. 11,600	11,600
4	Transport to hospital	Rs. 10,000/-	Rs. 10,000
5	For education loss	Rs. 40,000/-	Rs. 2,00,000
6	Extra nourishment	Rs., 15,000/-	Rs. 20,000
7	Attendant expenses	Rs. 10,000/-	Rs. 10,000
8	For the loss of his marriage in the future	Rs. 50,000/-	Rs. 80,000
9	Loss of earning capacity in the future	Rs. 2,00,000/-	Rs. 2,00,000
10	Expenses for Artificial leg	Rs. 5,01,050/-	Rs. 5,01,050
11	For the loss of future expectation of life	Rs. 2,00,000/-	Rs. 2,00,000
12.	For artificial leg maintenance	Rs. 76,900	Rs. 76,900
	Total	Rs . 13,68,550/-	Rs. 20,09,550

15. Thus, the impugned order is modified and the compensation already awarded by the Tribunal is enhanced to Rs.20,09,550/- from Rs.13,68,550/- together with interest at the rate of 7.5% from the date of claim.

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

(i) The Civil Miscellaneous Appeal is allowed.

ii) The first respondent/Transport Corporation is directed to deposit the above said amount of Rs.20,09,550/-together with interest at 7.5% p.a. from the date of claim petition till the date of payment within period of eight weeks from the date of receipt of a copy of this order.

ii) On such deposit, the appellant-claimant is permitted to withdraw the above said amount along with accrued interest thereon. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kkd

To

The Subordinate Judge
Motor Accident Claims Tribunal,
Panruti.

copy to

The section Officer
VR section
High Court Madras

+1 cc to Mr.P.Sankaranarayanan Advocate sr-22118

+1 cc to Mr.K.J.Sivakumar Advocate sr23118

+1 cc to Mr.K.M.Ramesh Advocate sr22151

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