

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.12.2019

C O R A M

The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2756 of 2014
&
C.M.A.No.3086 of 2017
and
C.M.P.Nos.18726 of 2017

G.Sathish Singh ... Appellant in C.M.A.No.2756 of 2014
...Respondent in C.M.A.No.3086 of 2017

Vs.

Metropolitan Transport Corporation
(Chennai) Ltd., rep. By its
Managing Director, Pallavan Salai,
Chennai - 600 002. ... Respondent in C.M.A.No.2756 of
2014
... Appellant in C.M.A.No.3086 of 2017

Common Prayer:

Civil Miscellaneous Appeals filed against the judgment and
decree, dated 17.06.2014, passed in M.C.O.P.No.2104 of 2012, on
the file of the II Judge, Motor Accident Claims Tribunal (Court
of Small Causes) Chennai.

For Appellant in C.M.A.No.2756/2014 } M/s.P.T.Salim
Fathima for
For Respondent in C.M.A.No.3086/2017 M/s.M.Swamikkannu

For Appellant in C.M.A.No.3086/2017 } Mr.K.S.Suresh
For Respondent in C.M.A.No.2756/2014

COMMON JUDGMENT

Judgement of the Court was delivered by Krishnan Ramasamy,J.

Both these Civil Miscellaneous Appeals are preferred, one by the Transport Corporation, and other by the claimant, aggrieved by the award, dated 17.06.2014, passed by the Motor Accident Claims Tribunal cum II Judge (Court of Small Causes) Chennai, (henceforth, referred to as 'the Tribunal') in M.C.O.P.No.2104 of 2012. They are hence, heard together, and they stand decided/disposed of, by this common Judgment.

2. Heard the submissions of Mr.P.T.Saleem, the learned counsel representing Mr.M.Swamikkannu learned counsel appearing on behalf of the Insurance Company, and Mr.K.S.Suresh, the learned counsel for the claimant.

3. For the sake of convenience, the parties to these Appeals will hereinafter be referred to as 'claimant' and 'Transport Corporation'.

4. On 08.04.2012, at 3.50 p.m. when the claimant was riding the Motorcycle, bearing Registration No.TN - 07 - AZ - 7605, from East to West direction in Arcot Road on the upgradient of Kodambakkam Railway Bridge, opposite to Sekar Emporium on the left side of the road, the Bus, belonging to the Transport Corporation, bearing Regn.No.TN - 01 - N - 7668, came from the opposite direction in a rash and negligent manner and over took an on-going Vehicle came to the extreme right hand side of the road and dashed against the Motorcycle, thereby, the claimant sustained grievous injuries. Since the driver of the Transport Corporation bus is responsible for the accident, the claimant filed Claim Petition against the Transport Corporation, claiming a sum of Rs.39,00,000/- as compensation.

5. The Transport Corporation resisted the Claim Petition by filing a Counter Statement, inter alia stating that the accident had occurred owing to the fault of the claimant, as the claimant came from the opposite direction in a rash and negligent manner, and also over took the other vehicles, and seeing the same, though the driver of the Bus applied the brake, the claimant came and grazed voluntarily with the Bus in right side corner and courted the accident, and hence, they are not liable to pay the compensation amount. That apart, the compensation amount claimed by the claimant is excessive and exorbitant, and therefore, the Transport Corporation prayed for dismissal of the claim petition

6. Before the Tribunal, in order to prove the claim, claimant examined himself as P.W.1, besides examining one other witness as P.W.2/Doctor and marked 18 documents as Exs.P.1 to P.18. On behalf of the Transport Corporation, one witness by name G.Sathish, (Driver of the Corporation bus) was examined as R.W.1 and no document was marked.

7. The Tribunal, on the basis of both oral and documentary evidence held that the accident was on account of rash and negligent driving of the driver of the Bus belonging to Transport Corporation. By arriving at such a conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.10,49,200/- with interest at the rate of 7.5% per annum from the date of Petition till payment as the compensation to the claimant. The break up details of the compensation amount awarded by the Tribunal are as follows ;-

1. Loss of income for 6 months	:	Rs.42,000/-
2. Transportation	:	Rs.15,000/-
3. Extra nourishment	:	Rs.25,000/-
4. Damage to Clothes	:	Rs.1,000/-
5. Medical Expenses	:	Rs.1,50,000/-
6. Attender Charges	:	Rs.15,000/-
7. Mental Agony to the petitioner	:	Rs.50,000/-
8. Loss of Amenities of life	:	Rs.50,000/-
9. Loss of Expectation of Life	:	Rs.30,000/-
10. Loss of Proper Marital Alliance	:	Rs.50,000/-
11. Pain and suffering	:	Rs.50,000/-
12. Permanent Disability	:	Rs.5,71,200
Total	:	Rs.10,49,200/-

8. Questioning the quantum of compensation awarded by the Tribunal as exorbitant, the Transport Corporation filed C.M.A.No.3086 of 2017. Whereas, finding the award amount as inadequate, the claimant has filed C.M.A.No.2756 of 2014, seeking enhancement of the compensation.

9. It is the contention of the learned counsel for the Transport Corporation that the compensation awarded by the Tribunal under the head of Permanent Disability at Rs.5,71,000/- is on the higher side and though the Tribunal relied upon the disability certificate issued by the Doctor, marked as Ex.P.18, for assessing disability of the claimant, the learned counsel pointed out that the disability certificate was not issued by the Doctor, who treated the claimant and was examined as P.W.2, and it was issued by some other Doctor, and even during cross-examination, P.W.2/Doctor himself admitted that he has not given

treatment to the injured claimant and therefore, he contended that Ex.P18 ought not to have relied upon by the Tribunal. Further, the learned counsel contended that multiplier method is not applicable to this case, since the disability sustained by the claimant cannot be said to be a total permanent disability and under such circumstance, the question of applying the multiplier method does not arise at all.

9.1 Further, the learned counsel contended that the notional income fixed by the Tribunal at Rs.7,000/- in the absence of any income proof marked by the claimant is also incorrect, and the same has resulted in awarding exorbitant sum of compensation towards Permanent Disability. Hence, the learned counsel submitted that the compensation awarded by the Tribunal towards Permanent Disability requires appropriate reduction. Like the same, the compensation awarded under various heads are also on the higher side and learned counsel, therefore, sought for a suitable reduction in the compensation amount awarded by the Tribunal.

10. Per contra, M/s.P.T.Salim Fathima, the learned counsel appearing for the claimant submitted that, the compensation awarded by the Tribunal under the head of Permanent Disability is lesser. The learned counsel submitted that on account of the disability sustained by the claimant due to the accident, the claimant has sustained Grade-II Shaft Fracture of Femur Right; Grade II Fracture both bone right leg, fracture proximal phalanges 3rd, 4th and 5th fingers right hand, which is said to have bone shortening of right femur 6 cms and mal union right and left 51 cm, complete right knee loss of monstrix and right tibia mal union and shortening 2.5.c.m right 34 left, and due to the said fractures, the claimant cannot fold his right leg, cannot sit cross legged position and do any job by using right hand and since the claimant is a AC Mechanic by profession, his nature of work requires him to do his job with articles by sitting on floor and with the aforesaid difficulties, he would not be able to work as before. In support of same, the claimant has marked Exs.P3 - P7/Discharge Summaries and Ex. P.16/C.D. Ex.P.17/X-ray Film and Ex.P.18/Disability Certificate. In fact, P.W.2/Doctor deposition also corroborates the disability sustained by the claimant. The learned counsel further submitted that the Tribunal without properly appreciating the fact that the functional disability suffered by the claimant having been 100%, erred in reducing the percentage of disability to 40%. Therefore, the learned counsel sought for suitable enhancement of the compensation towards Permanent Disability.

10.1 Further, the learned counsel submitted that the compensation awarded by the Tribunal towards Loss of Earning at

Rs.42,000/- is lesser. He submitted that the claimant is a AC Mechanic and on the account of the accident, he underwent many surgeries and he took inpatient treatment for 152 days, which prevented from attending his work for a maximum period of six months and when the Tribunal fixed the monthly income earned by him at Rs.7,000/- it ought not to have granted such a lesser amount towards Loss of Earning for six months.

10.2 Further, the learned counsel submitted that the compensation awarded by the Tribunal under other heads, viz., i) Extra Nourishment at Rs.25,000/- ; ii) Transportation at Rs.15,000/-; iii) Medical Expenses at Rs.1,50,000/-; iv) Attender Chargers at Rs.15,000/-; Loss of Amenities of Life at Rs.50,000/-; Loss of Expectation of Life Rs.30,000/-; Loss of marital prospectus at Rs.50,000/- and Pain and Sufferings at Rs.50,000/- are all lesser and therefore, the learned counsel sought for appropriate enhancement of compensation awarded by the Tribunal.

11. We have heard the submissions of M/s.P.T.Salim Fathima, the learned counsel representing Mr.M.Swamikkannu, learned counsel appearing on behalf of the claimant and Mr.K.S.Suresh, the learned counsel for the Transport Corporation and perused the materials placed on record.

12. Admittedly, on account of the accident, the claimant sustained fracture Grade-II Shaft Fracture of Femur Right; Grade II Fracture both bone right leg, fracture proximal phalanges 3rd, 4th and 5th fingers right hand, which is said to have bone shortening of right femur 6 cms and mal union right and left 51 cm, complete right knee loss of monitrix and right tibia mal union and shortening 2.5.c.m right 34 left. In support of the same, the claimant has marked Exs.P.3 to P.7, Discharge Summaries, and Exs.P.16 C.D. & P.17/X-ray Film.

12.1 On perusal of Ex.P.3, Discharge Summary, it is seen that the claimant had taken treatment as inpatient at Rajiv Gandhi Government General Hospital, Chennai from 08.04.2012 to 02.07.2012 for a period of 85 days. He had suffered Grade II Fracture Shaft of Femur Right, Grade-II Fracture bone both right let, Fracture Proximal phalanges 3rd 4th and 5th fingers right hand. Further, the claimant had undergone surgery on 09.04.2012, whereby, wound debridement, external fixation for right femur with 'K' wire fixation for proximal phalanges right hand on 26.05.2012 ORIF with IL Nailing and Bone grating for right tibia and on 16.06.2012, IL Nailing right femur and bone grafting done to the claimant.

12.2 Further, as per Ex.P.4, it is seen that the claimant took treatment as inpatient at St.Isabel's Hospital,

Chennai from 25.07.2012 to 25.08.2012 for a period of 30 days, for the complaints of swelling and infection in thigh region, whereby, would debridement done under IV Sedation on 18.08.2012. As per Ex.P.5, he took continuous treatment in the same Hospital from 27.09.2012 to 20.10.2012 for a period of 23 days for Osteomyelitis right femur, for which, wound debridement and screw removal done on 11.10.2012. Further, as per Ex.P.6, he took treatment as inpatient at Public Health Center from 07.02.2013 to 15.02.2013 for a period of 9 days and then, as per Ex.P.7, he took treatment as inpatient in the very same Hospital from 21.01.2014 to 22.01.2014, i.e. for two days, whereby, external fixation removal of right femur done and finally, Ex.P.18, Disability Certificate issued by the Doctor, Amarnath R Sowlee also corroborates the same.

12.3 Therefore, we are of the view the injuries sustained by the claimant is very serious in nature and due to which, the claimant cannot fold his right leg, cannot sit cross legged position and do any job by using right hand and since the claimant is a AC Mechanic by avocation, and his nature of work would require him to do his job with articles by sitting on floor, obviously, with the aforesaid difficulties, he would not be able to work as before. Hence, the disability fixed by the Tribunal at 40% is correct and we do not find any infirmity in the same. Similarly, we do not find any infirmity in adopting the multiplier method of '17', since the claimant is 29 years old at the time of the accident, as per the ratio fixed by the Hon'ble Supreme Court in Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the Tribunal has rightly adopted multiplier of '17' and the same stands confirmed.

12.4 Insofar as the notional income fixed by the Tribunal is concerned, we are of the view that the same is low. Admittedly, the claimant is a AC Mechanic by avocation and earning Rs.7,500/- per month. However, the claimant has not produced any document to substantiate that he is earning income. In such circumstances, in the present case, the Tribunal has fixed the notional income of the deceased at Rs.7,000/- per month, which is slightly meager and since the claimant was aged about 29 years at the time of the accident, and he is a Bachelor, it is just and necessary to fix appropriate notional income by considering various aspect. The Hon'ble Supreme Court, in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014(1) TNMAC 459, fixed the monthly income at Rs.6,500/- even for a vegetable vendor, who sustained injuries in the accident in the year 2008.

12.5 Since in the present case, the claimant is a AC Mechanic by avocation, and the accident occurred in the year

2012, we deem it fit to add a sum of Rs.1000/- to the notional income fixed by the Tribunal, i.e Rs.8,000/- is fixed as notional income of the claimant. Therefore, the compensation towards Permanent Disability is determined in the following manner:-

Rs.8,000/- + 40% of Rs.8,000/- x 12 x 17 x 40%=
Rs.9,13,920/-

12.6 So far as the compensation awarded by the Tribunal towards Loss of Income at Rs.42,000/-, we are of the view that the same is just and proper. Similarly, the compensation awarded by the Tribunal under various other heads are also just and fair and we are not inclined to interfere with the same and the same stands confirmed.

12.7 Thus, the total compensation payable to the claimant is modified as hereunder :-

Sl.N o.	Heads	Tribunal Award	High Court Award	Modified/Set aside/confirm ed
1	Loss of income for 6 months	Rs.42,000/-	Rs.42,000/-	Confirmed
2	Transportation	Rs.15,000/-	Rs.15,000/-	Confirmed
3	Extra nourishment	Rs.25,000/-	Rs.25,000/-	Confirmed
4	Damage to Clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
5	Medical Expenses	Rs.1,50,000/-	Rs.1,50,000/-	Confirmed
6	Attender Charges	Rs.15,000/-	Rs.15,000/-	Confirmed
7	Mental Agony to the claimant	Rs.50,000/-	Rs.50,000/-	Confirmed
8	Loss of Amenities of life	Rs.50,000/-	Rs.50,000/-	Confirmed
9	Loss of Expectation of Life	Rs.30,000/-	Rs.30,000/-	Confirmed
10	Loss of Proper Marital Alliance	Rs.50,000/-	Rs.50,000/-	confirmed

Sl.N o.	Heads	Tribunal Award	High Court Award	Modified/Set aside/confirm ed
11	Pain and suffering	Rs.50,000/-	Rs.50,000/-	Confirmed
12	Permanent Disability	Rs.5,71,200	Rs.9,13,920/-	Modified
	Total	Rs.10,49,200	Rs.13,91,920/-	

12.8 Consequently, the total compensation amount of Rs.10,49,200 awarded by the Tribunal is hereby modified and enhanced to Rs.13,91,920/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered.

13. The Transport Corporation is directed to deposit the entire modified amount as determined by this Court with interest at the rate of 7.5% from the date of claim petition till the date of deposit, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the compensation payable to the claimant of Rs.13,91,920/- to his bank account through NEFT or RTGS within a period of three weeks thereon and the claimant is permitted to withdraw the same.

14. In the result, the Civil Miscellaneous Appeal filed by the Transport Corporation is dismissed and the Civil Miscellaneous Appeal filed by the claimant is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sd

To

The Motor Accident Claims Tribunal/
II Judge, Court of Small Causes, Chennai.

Copy to: The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.M.Swamikkannu , Advocate SR.No. 101537

+1cc to Mr.K.S.Suresh , Advocate SR.No. 101574

C.M.A.No.2756 of 2014&C.M.A.No.3086 of 2017

A.SK(06/08/2020)