



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)NO.562 of 2018

N.Iyyappan

:Appellant/Claimant

.vs.

1.Srikumar

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division-III,
Ranithottam,
Nagercoil,
Kanyakumari District.

:Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, praying this Court to modify the award passed in M.C.O.P.No.9 of 2011, dated 20.2.2012, on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Nagercoil, Kanyakumari District.

For Appellant

:Ms.Ellis Chitra Devi

For Respondents

:Mr.P.Prabhakaran

1 and 2

JUDGMENT

[Judgment of the Court was made by **K.KALYANASUNDARAM,J.**]

Being dissatisfied with the award passed in M.C.O.P.No.9 of 2011, dated 20.2.2012, by the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Nagercoil, Kanyakumari District, the claimant has preferred this appeal.

2.The brief facts of the case:

This is a case of injury. According to the claimant, on 24.06.2009, he was proceeding in a two-wheeler and at that time, the bus belonging to the second respondent/Transport Corporation came in a rash and negligent manner and hit against the claimant. In the impact, he sustained injuries and multiple fractures. After taking first aid, the claimant was admitted in Anandhapuri Hospital, Thiruvananthapuram as inpatient on 24.6.2009 and he was discharged on 30.8.2009 and during that period, he underwent surgeries and plates were fixed.

3.The claimant has further stated that he was running a transport business and also a partner in Gomathi Enterprises, Kottar and Proprietor of Gomathi Tyres, Kottar, however, due to the



accident, he lost his income and sought for a sum of Rs.60 lakhs as compensation.

4.The second respondent/Transport Corporation resisted the claim petition by filing a detail counter. According to the second respondent, the claimant was responsible for the accident and hence, they are not liable to pay compensation to the claimant and the claim made by the appellant/claimant is excessive.

5.Before the Tribunal, the parties had let in their oral and documentary evidence. After analyzing the entire evidence, the Tribunal came to the conclusion that the driver of the bus belonging to the second respondent/Transport Corporation had caused the accident and awarded compensation of Rs.7,54,316/- together with interest at 7.5% p.a.

6.Ms.Ellis Chitra, learned counsel for the appellant would submit that the claimant had suffered multiple fractures and also undergone surgeries and his mobility was totally crippled in view of the accident. The learned counsel would state that though the Doctors have given evidence that the claimant had sustained 52% disability, this Court has to consider the disability at 100% and award compensation accordingly.

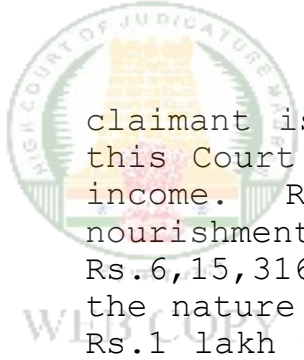
7.Per contra, Mr.P.Prabhakaran, learned counsel appearing for the second respondent/Transport Corporation would state that the accident had taken place only due to the negligence of the claimant, however, the Tribunal has awarded reasonable compensation, which does not require interference by this Court.

8.Heard the rival submissions made on either side and perused the materials placed before this Court.

9.This appeal has been filed by the claimant praying for enhancement of compensation. Hence, there is no necessity to elaborate on the issue of negligence.

10.The claimant was 47 years old at the time of accident and he suffered multiple fractures, are not disputed. Dr. Marthandam Pillai and Dr.Rajan, who were examined as P.W.3 and P.W.4, had produced the X-Ray and other medical records and also deposed that the claimant had sustained permanent disability. The Tribunal has taken the permanent disability as 52% and awarded Rs.1,04,000/- by applying Rs.2,000/- per percentage.

11.It is evidence from the oral evidence of P.W.1 and P.W.2 and Ex.P12 to Ex.P16 that the claimant was engaged in business activities and due to the accident, his movement is curtailed and his business seriously affected. Hence, it would be appropriate to apply multiplier theory. Though the claimant has stated that he was earning Rs.20,000/- p.m., no material was produced to substantiate the same. Hence, we fix Rs.7500/- as notional income and by adding 10% towards future prospects, the income of the



claimant is arrived at Rs.8,250/- and by applying multiplier '13', this Court awards a compensation of Rs.12,87,000/- towards loss of income. Rs.10,000/- awarded by the Tribunal towards extra nourishment, Rs.5000/- awarded for transportation and a sum of Rs.6,15,316/- towards medical expenses are confirmed. Considering the nature of injury and the treatment undergone, this Court awards Rs.1 lakh towards pain and suffering and also a sum of Rs.50,000/- towards attendant charges. In total, the claimant is entitled to a sum of Rs.20,67,316/-, rounded off to Rs.20,65,000/-.The interest awarded by the Tribunal is confirmed.

12.In the result, the Civil Miscellaneous Appeal is partly allowed and the award amount is enhanced from Rs.7,54,316/- to Rs.20,65,000/-. The second respondent/Transport Corporation is directed to deposit the modified award amount together with proportionate accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is permitted to withdraw the entire award amount with accrued interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal. The appellant/claimant is directed to pay the court fee for the enhanced award amount within a period of four weeks from the date of receipt of a copy of the judgment. No costs.

Sd/-

Assistant Registrar (C.O)

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Sub Assistant Registrar(CS)

vsn

To

1.The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate),
Kanyakumari District at Nagercoil.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1CC to Mr.P.Prabhakaran, Advocate, Sr.No.59824.

+1CC to A.Elis Chitra Devi, Advocate, Sr.No.59997.

C.M.A(MD)No.562 of 2018

CS: 30/05/2019/3P/6C