



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.10.2020

Pronounced on: 22.10.2020

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1699 of 2016

S.Krishnamurthy

...Appellant

Vs

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam Ltd.,
Railway Station New Road,
Kumbakonam Taluk,
Thanjavur District.

...Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 19.04.2013 made in M.C.O.P.No.1942 of 2010 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant
For Respondent

:Mr.K.Varadha Kamaraj
:Mr.D.Venkatachalam

J U D G M E N T

(The case has been heard through video conference)

The appeal is filed by the accident victim for enhancement of compensation not being satisfied by the compensation of Rs.10,52,000/- for fractured injury sustained by him in the motor accident.

2. The case of the appellant is that, on 07.01.2010 while he was at Nallanchavadi near Seergazhi opposite to the house of one Selvaraj, near the break down bus, the bus bearing registration No.TN 49 N 2001 driven by its driver very rash and negligent manner hit against the break down bus, the appellant and others. At the time of accident, the appellant was working as RMS Postal Assistant earning Rs.7,000/- pm. In the accident, he sustained degloving injury with skin loss of right leg and fracture of MTB II right and injury over left knee and injury over right chest. He was admitted in the hospital as in-patient from 07.01.2010 to 09.01.2010 at Stanley Hospital, Chennai then for next 4 days at CMC, Vellore and from 13.01.2010 to



20.01.2010 at Mother's Hospital, Thirupathi. He was shifted to Aesthetics Clinic, Tirupathi for surgery and treated as in-patient from 1.02.2010 to 11.02.2010.

3. The Tribunal after considering the nature of injury and disability caused due to the injury, held that the injury has caused functional disability of 60%, hence applied multiplier for the loss of income and considering the medical bills, the tribunal awarded the compensation of Rs.10,52,000/-.

4. In the appeal for enhancement, the appellant state that, the tribunal ought to have assessed the loss of earning power as 100% instead of 60%. The future prospect of the injured not taken into account. The compensation of Rs.42,000/- towards loss of income during the treatment period is low. For other disability separate compensation ought to have awarded. The compensation under heads like loss of amenities, transport, extra nourishment has to be enhanced.

5. Per contra, the learned counsel for the respondent/Transport corporation submitted that, the tribunal erred in applying multiplier for non schedule injury. At the most, the claimant ought to have been paid only Rs 2000/- per percentage of disability. PW-2, doctor who assessed disability, had given certificate Ex P-8, stating that the claimant suffer 25% disability for fibrosis lower lobe lung. 25% disability for SSG area lower leg, ankle and foot and head, shrunk heal, ankle movements DFPF 50 ° restricted. Difficulty to squat and walk faster. 20% disability for malunited fracture at II MTB. Due to this injury the claimant will find difficult to continuously stand or ride vehicle. None of these disability will cause impediment in earning capacity. The Tribunal erred in converting the physical disability into earning disability without following the dictum of the Supreme Court judgment in Rajkumar - vs- Ajay Kumar case. Further, the tribunal without any evidence has accepted the plea of the claimant that he is working as RMS postal Assistant and earning Rs.7,000/- per month. In the absence of documentary proof for his employment or income, the tribunal ought not to have fixed Rs.7,000/- as income.

6. The learned counsel for the respondent/State Transport Corporation would further submit that, challenging the excess award passed by the tribunal, the state transport corporation filed appeal before this court in C.M.ANo. 3025 of 2014. This court after considering the grounds of appeal and the impugned award, dismissed the appeal holding that the determination of compensation is perfectly correct and there is no reason for the appellate Court to interfere with the same.

7. The learned counsel for the respondent would submit that after dismissal of the appeal by the High Court on 21.11.2014, the entire award amount with interest was deposited



and the claimant had withdrawn the money without reserving right to file appeal. Thereafter got his claim petition numbered and seek enhancement of compensation. Hence this appeal is not maintainable and sought for dismissal of the appeal.

8. In response to this plea, the learned counsel for the appellant would state that, this appeal was filed before 21.11.2014. In C.M.A.No.3025 of 2014, the appeal filed by the transport corporation, he was not heard. The appeal was dismissed at the admission stage. Therefore, the order passed in C.M.A.No. 3025 of 2014 will not hit by resjudicata.

9. Since a interesting legal issue has been raised by the respondent's counsel, before adverting to the merits of the appeal under consideration, it is necessary for the court to first decide whether this appeal can be dismissed on the ground "issue already heard and decided finally" invoking the principle of res judicata.

10. The award of the tribunal and the order in the appeal is judgment in personum. No doubt, in appeal preferred by the transport corporation, this court has gone into merits of the case and decided, but without hearing the claimant, who by the time had filed his appeal for enhancement, but got it numbered after two years. Therefore, the order passed in C.M.A.No.379 of 2014 though between the same parties, will not operate as resjudicata, but shall have higher persuasive value.

11. This court is embolden to hold so, in view of the Full Bench Judgment of this Court rendered a century ago in Secretary of State -vs- Syed Ahmad Badsha Sahib Bahadur (AIR 1921 Mad 248 = 14 L.W 128). In the said case, the question referred to the Full Bench was whether a judgement in an earlier proceeding was conclusive or binding on a person who was not a party thereto. The Full Bench answered the question in negative, but expressed the opinion that such a judgment can only be used in evidence, even though it will not fall under section 41 of the Evidence Act. The Full Bench has also observed that the judgment cannot be used for the purpose of preventing the other side from proving facts which he sets up. (Emphasis added)

12. The factual difference between the case in hand and the case cited is that, in the instant case the appellant was a party but the appeal was decided without putting him notice. In the case cited, they were not inter-parties. Further, this court take note of the fact that this appeal was filed in the Registry on 02.04.2014 with defects. Later, represented with 766 days delay and got it condoned on payment of costs. Meanwhile, the appeal filed by the respondent/ transport corporation was decided on 21.11.2014 without notice to this appellant.



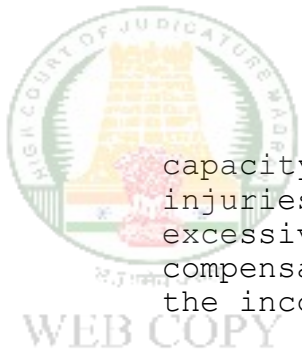
13. Now reverting back to the merit of the appeal, this court finds no evidence to show the injured was earning Rs.7,000/- per month as RMS Postal Assistant. The claim if true could have been easily proved through documents. In respect of medical expenses, a sum of Rs.1,94,248/- as per bills Ex.P-7 fully reimbursed. For loss of amenities, physical ugly appearance, pain and suffering and loss of income during the treatment, the Tribunal has adequately awarded Rs.25,000/-, Rs.20,000/-, Rs.50,000/- and Rs.42,000/- (Rs.7,000 x 6 months) respectively.

14. As far as loss of earning power, in view of this Court, the tribunal erred and carried away by the wrong information given in the claim petition at column 11 that the claimant's right leg has amputated. The tribunal has failed to see the photographs of the claimant marked as Ex.P-10 and other medical records. Had the tribunal properly appreciated these documents it would not have applied the multiplier method at all. Certainly not 60% loss of earning capacity.

15. Through the discharge summary issued by 5 hospitals, we find that immediately after the accident, the injured was taken to the Government Hospital at Seergazhi. Then to Stanley Hospital at Chennai. From Stanley to Vellore CMC. At CMC he was advised surgery. Against medical advice, he got discharged from CMC and got admitted at Mother's hospital at Thirupathi. In that hospital external implantation was done to his fractured leg. After discharge from Mother's Hospital on 20.01.2010, he got admitted in Aesthetic Clinic on 01.02.2010 for plastic surgery, in view of granulated wound from lower leg to the toes on dorsum mid foot on plantar region. In this clinic, wound excision and split skin grafting done.

16. Ex.P-2 to Ex.P-6 indicates the injuries sustained by the claimant in the accident are degloving right foot, Haemothorax right, fracture at 2nd metatarsal right. For the said injuries he had been treated and recovered. For the malunited fracture of II metatarsal bone (MTB) PW-2 has assessed 20% disability. This injury may require compensation applying multiplier under the head functional disability leading to loss of earning capacity and rest of the injuries ought to have been compensated based on the percentage of physical disability. The tribunal has erred in this aspect and by resorting to multiplier method had in fact awarded higher compensation more and above what the appellant is entitled.

17. The tribunal accepting the plea of the claimant that he is working as RMS postal Assistant had fixed the income as Rs.7,000/-. Though no addition is given under future prospects, the exorbitant fixation of 60% disability in earning



capacity and the application of multiplier for non schedule injuries without any justification had resulted in awarding excessive compensation of Rs.10,52,000/-. By any standard, the compensation awarded for the injuries and disability vis a vis the income of the claimant requires no enhancement.

18. For the reasons stated above, C.M.A.No.1699 of 2016 is dismissed. No order as to costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

rpl
To

1. The Motor Accident Claims Tribunal,
VI Small Causes Court,
Chennai.

Copy To
The Section Officer,
V.R.Section,
High Court, Madras.

+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 34822.

C.M.A.No.1699 of 2016

VSNII(CO)
SP(24/08/2021)