

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.09.2020
CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3421 of 2013

A.Kumar

...Appellant/Claimant

versus

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division III Ltd.
Kancheepuram - 631 501.

...Respondent/ Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order dated 08.11.2011 in MCOP No.2167 of 2007 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant : Ms.Ramya V.Rao
for M/s.A.N.Viswanantha Rao

For Respondent : Mr.C.S.K. Sathish

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 08.11.2011 passed by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai in MCOP No.2167 of 2007.

2. The appellant / claimant sustained injuries on 01.07.2005, as a result of an accident caused by a bus owned by the respondent / Transport Corporation. He preferred a claim before the Motor Accidents Claims Tribunal in MCOP No.2167 of 2007 seeking compensation for the injuries sustained by him as a result of the accident.

3. The Motor Accident Claims Tribunal under the impugned award directed the respondent / Transport Corporation to pay the appellant / claimant a compensation of Rs.5,00,000/- together with interests and costs, as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)
Loss of earning power	2,88,000

Heads	Amount awarded by the Tribunal (Rs.)
Permanent Disability	50000
Loss of earning during treatment	30000
Transport to hospital	5000
Extra nourishment	5000
Damage to cloth and articles	2000
Medical expenses	90000
Pain and suffering	30000
Total	500000

4. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has preferred this appeal seeking for enhancement.

5. Heard Ms.V.Ramya Rao, learned counsel for the appellant and Mr.C.S.K. Sathish, learned counsel for the respondent / Transport Corporation.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. Before the Tribunal, the appellant / claimant has filed fifteen documents, which were marked as Exs.P1 to P15. Two witnesses were examined on his side, viz., the appellant / claimant himself as PW1 and the Doctor, who examined him as PW2. On the side of the respondent / Transport Corporation, no document was filed, but one witness examined as RW1 before the Tribunal.

8. The appellant / claimant was an Electrician, aged 35 years at the time of the accident. He sustained the following injuries as a result of the accident :

- a) Fracture Grade I shaft of Right Femer
- b) Fracture Grade 1 BB Right Leg 1/3rd
- c) Pelvic Compression

9. The Doctor, who assessed the disability of the appellant/claimant has issued the disability certificate (Ex.P14), which discloses that the appellant / claimant has suffered 50% disability. The same is also supported by the disability certificate issued by the Government Medical Board Doctor, which has been marked as Ex.P13.

10. Before the Tribunal the Doctor, who examined the appellant / claimant has issued the disability certificate (Ex.P14) and has also been examined as witness before the

Tribunal as PW2. The Tribunal has rightly accepted the same and therefore, rightly assessed the disability of the appellant / claimant at 50%. The appellant / claimant was aged 35 years at the time of the accident. The Tribunal has rightly adopted 16 multiplier for calculating the compensation towards loss of earning power to the appellant / claimant.

11. The appellant / claimant had suffered grievous injuries, as indicated earlier. He was treated as an inpatient in the Government Hospital between 01.07.2005 to 11.07.2005 and was treated several times in Puttur. He was also hospitalised in Chettinad Hospital and Research Institute, Padur between 01.02.2006 to 15.02.2006, as seen from the discharge summaries, which were marked as Exs.P1, P5 and P8 as well as the outpatient records, which were marked as Ex.P6. The appellant / claimant has been taking continuous treatment for mal-union of Tibia and external fixation of bone marrow injection was also performed on the appellant / claimant. The photographs of the appellant / claimant after the injury was also filed as documents before the Tribunal, which were marked as Ex.P11. Even before this Court, the learned counsel for the appellant has produced the photographs of the appellant / claimant with regard to his present condition. As seen from the photographs, the appellant / claimant seems to have suffered grievous injuries and is able to walk only with the help of a walking stick.

12. However, the Tribunal failed to award any compensation towards loss of future prospects, which he is legally entitled to. The appellant / claimant was an Electrician at the time of the accident, as seen from the evidence available on record. The respondent / Transport Corporation has not disputed the avocation of the appellant / claimant. The Hon'ble Supreme Court in a recent decision in the case of Erudhaya Priya versus State Express Transport Corporation Limited reported in 2020 SCC Online SC 601 has held that the injured / claimant is entitled for loss of future prospects, if he is able to establish that the injuries sustained by him would have impacted on his future earning prospects. The Hon'ble Supreme Court had followed the earlier decision in the case of Sandeep Khanuja versus Atul Dande and another reported in 2017 3 SCC 351, wherein, it has been held that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

13. In the judgment cited supra, the Hon'ble Supreme Court has looked into the present photographs of the victim / injured with regard to his present physical condition, even though the same were not marked as Exhibits before the Motor Accidents Claims Tribunal. In the instant case also, the learned counsel for the appellant / claimant has produced photographs disclosing the present physical condition of the appellant / claimant which entitles him to get compensation

towards loss of future prospects.

14. In the case on hand, the injuries sustained by the appellant / claimant, as indicated earlier are so grievous in nature, which has incapacitated the appellant / claimant permanently from doing his work as an Electrician. The present photographs of the appellant / claimant undoubtedly will lead to the conclusion that he is entitled for compensation towards loss of future prospects.

15. Accordingly, this Court awards 40% towards loss of future prospects to the appellant / claimant, as per the decision of the Hon'ble Supreme Court referred to supra, since the appellant / claimant was aged 35 years at the time of the accident. The Tribunal has fixed the notional monthly income of the appellant / claimant at Rs.3,000/-. The accident happened in the year 2005. The appellant / claimant was an Electrician, aged 35 years at the time accident. If due consideration was given to the nature of the avocation of the appellant / claimant and the year of the accident, the Tribunal would have fixed the notional monthly income of the appellant / claimant at a higher sum. However, the Tribunal has erroneously failed to give due consideration for the same and without any basis has fixed the notional monthly income at a meagre sum of Rs.3,000/-. This Court after giving due consideration to the avocation of the appellant / claimant and the year of the accident fixes the notional monthly income of the appellant / claimant at Rs.4,000/- instead of Rs.3,000/- fixed by the Tribunal. As indicated earlier, the appellant / claimant is also entitled for loss of future prospects. The Tribunal has adopted the correct multiplier of 16, since the appellant / claimant was aged 35 years at the time of the accident.

16. For the foregoing reasons, the compensation towards loss of earning power is enhanced from Rs.2,88,000/- to Rs.5,37,600/- by this Court, which is as detailed below :

$$\text{Rs.4,000 /-} + 40\% \times 12 \times 16 \times 50/100 = \text{Rs.5,37,600/-}$$

17. The Tribunal has awarded a compensation of Rs.30,000/- towards loss of income during the period of treatment for the appellant / claimant, which is a correct assessment and the same is confirmed by this Court.

18. Insofar as the compensation awarded by the Tribunal towards medical expenses at Rs.90,000/-, pain and suffering at Rs.30,000/- damage to cloth and articles at Rs.2,000/- and permanent disability at Rs.50,000/- are concerned, the same is confirmed by this Court as it is a just compensation.

19. However, the Tribunal has awarded a lesser compensation towards Transportation and Extra nourishment. Accordingly, this Court enhances the compensation towards transportation from Rs.5,000/- to Rs.10,000/- and Extra nourishment from Rs.5,000/- to Rs.10,000/-.

20. The Tribunal has erroneously failed to award any compensation towards attender charges, loss of amenities, future medical expenses, which the appellant / claimant is legally entitled to, as per the settled practice. Considering the nature of injuries sustained by him, this Court therefore, awards a compensation to the appellant / claimant towards attender charges at Rs.10,000/-; towards loss of amenities at Rs.20,000/- and towards future medical expenses at Rs.20,000/-.

21. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of earning power * Rs.3,000/- x 12 x 16 x 50% #Rs.4,000/- + 40% x 12 x 16 x 50%	2,88,000 *	5,37,600 #
Permanent Disability	50000	50000
Loss of income	30000	30000
Transport to hospital	5000	10000
Extra nourishment	5000	10000
Damage to cloth and articles	2000	2000
Medical expenses	90000	90000
Pain and suffering	30000	30000
Attender charges	-	10000
Loss of amenities	-	20000
Future medical expenses	-	20000
Total	500000	809600

22. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.5,00,000/- to Rs.8,09,600/- as indicated above. No costs.

23. The respondent / Transport Corporation is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.2167 of 2007

Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant / claimant through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellant/claimant before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsi2

To

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

2.The Section Officer,
V.R. Section,
Madras High Court.

+1cc to Mr.A.N.Viswanatha Rao , Advocate SR.No. 31820

C.M.A.No.3421 of 2013

A.SK(18.01.2021)



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