

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.922 of 2013
(Through Video Conferencing)

A.Elumalai

... Appellant/Petitioner

Vs.

Metropolitan Transport Corporation,
(Chennai) Ltd., rep. by its Managing
Director, Pallavan Salai,
Chennai 600 002.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.11.2012 made in M.A.C.T.O.P.No.1634 of 2011 on the file of the III Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.Suryanarayanan
for Mr.M.Swamikkannu

For Respondent : Mr.K.Natarajan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant against the impugned Judgment and Decree dated 08.11.2012 passed by the III Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai in M.A.C.T.O.P.No.1634 of 2011.

2. By the impugned Judgment and Decree, the Tribunal has arrived at a sum of Rs.3,97,000/- as compensation. However, it has restricted the compensation to Rs.2,77,900/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellant.

3. Restricted compensation has been awarded by the Tribunal as it has held that the appellant was guilty of contributory negligence. Thus, 30% has been fixed on the appellant and 70% on

the driver of the bus of the respondent. In this appeal, the appellant seeks for an enhancement of the compensation.

4. The appellant had sustained injuries while trying board a bus of the respondent State Transport Corporation when the conductor of the bus signalled the bus driver to start the bus and blew the whistle.

5. The appellant thus fell and suffered fracture. The injuries suffered by the appellant has been described in the impugned order as follows:-

He had of both bones distal at 1/4th right leg, chip fracture medial condyle at the right femur, fracture head of fibula right with collateral leg injury and fracture of medial malleolus at right. Open reduction and internal fixation was done at right leg. Bone grafting was done. Ex.P3 discharge summary shows that he had taken further inpatient treatment at the above hospital for removal of implants from 18.08.2011 to 31.08.2011. Ex.P4 Disability Certificate issued by PW2 Dr.AmarnathSawlee also speaks about the same.

6. The appellant had taken treatment as an inpatient at the Kilapauk Medical College from 13.10.2010 to 25.11.2010. As per the Ex.P.3 Discharge Summary, it was stated that the appellant had also taken treatment as an inpatient in the same hospital from 18.08.2011 to 31.08.2011 for removal of implants.

7. According to the appellant, the physician, who deposed evidence as P.W2 on his behalf fixed the permanent disability as 60% vide Ex.P4 Disability Certificate. It is submitted that the Tribunal has however considered only 30% disability for the purpose of computation of compensation.

8. It is submitted that since the appellant was engaged in an unorganised sector as a Parotta Master, he was unable to produce any evidence to substantiate his monthly income of Rs.9,000/- per month. It is submitted that the Tribunal has however considered the income of the appellant as Rs.5,000/- per month to arrive at the aforesaid compensation.

9. In this connection, the learned counsel for the appellant drew my attention to the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC

735, to state that the appellant,s notional income can be considered as Rs.6,500/- p. m as was done by the Hon'ble Supreme Court in the said case in the case of a vegetable vendor.

10. In the above case, the Hon'ble Supreme Court had notionally fixed the income of a vegetable vendor as Rs.6,500/- for the year 2008. He submits that the notional income of the appellant can be considered for the same period and considering Rs.6,500/- as the notional income of the appellant for the year 2008 and by applying the inflation index as per notification No.370142(E) (No.26/2008) (F.No.370/42/3/2008-TPL), dated 13.06.2006 issued by the Central Board of Direct Taxes, the notional income of the appellant would be around Rs.8,414/- per month at the time of the accident. The details of the calculation are as follows:-

The Notional Income fixed by the Hon'ble Supreme Court of India for the vegetable vendor i.e., Rs.6,500/- during the year 2007-2008. Cost of Inflation Index X for the year 2010-2011

Cost of Inflation Index for the year 2007-2008
Rs.6,500 x 167
Income of the deceased is : ----- = Rs.8414/-
129

11. It is further submitted that the claimant would be thus entitled for an enhanced compensation towards permanent disability and towards loss of earning during treatment. It is further submitted that the claimant would be entitled to further compensation on account of the future prospects at 40% as per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

12. It is further submitted by the learned counsel for the appellant that the Tribunal erred in reducing the compensation by fixing the disability at 30% and holding him also negligent for trying to board a moving bus. It is therefore submitted that the compensation has to be enhanced.

13. Per contra, the learned counsel for the respondent State Transport Corporation submits that the compensation awarded to the appellant was a just compensation and there was no infirmity in the impugned judgement and decree and therefore prays for a dismissal of this Civil Miscellaneous Appeal.

14. I have considered the arguments advanced by the learned counsel for the appellant and the respondent.

15. The appellant/ claimant was working as a Parotta Master (cook). The avocation of the appellant/claimant has not been disputed. It requires long hours of standing and working at a stretch. The appellant suffered injuries while trying to embark into the moving bus of the respondent State Transport Corporation. In the counter, the respondent have submitted that the appellant was drunk and thus fell off the bus while trying the embark on it. Thus, there are no grounds to alter the liability fixed by the Tribunal.

16. However, the notional income of Rs.5,000/- per month adopted for awarding the aforesaid compensation appears to be low in absence of direct evidence by the appellant/claimant to substantiate the income of Rs 9,000/- pm.

17. Though the appellant was working in an unorganised sector as a Parotta Master (cook), the income of the appellant would to have slightly more. Therefore, the notional income of the appellant is taken as Rs.6,500/- at the time of accident in absence of direct evidence for the purpose of calculation in the light of the above observations.

18. As per the decision of the Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164, the Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to "hold an enquiry into the claim" for determining the "just compensation". The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the "just compensation".

19. It further held that while dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. It further directed the Tribunal may also keep in view the First Schedule to the Workmen,s Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

20. Where a claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of "loss of future earnings" would depend upon the effect and impact of such permanent disability on his earning capacity. The extent of permanent disability would not necessarily result in a corresponding loss of earning capacity in the future. The Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164, has summarised the position as follows:-

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

21. In my view, the permanent disability arrived by the Tribunal appears with reference to loss of earning capacity to be reasonable save the calculation based on the notional income of Rs.5,000/- per month. I am not interfering with the aforesaid finding of 30% disability.

22. The notional income of the appellant claimant is increased to Rs.6,500/-. As per the decision of the Hon'ble

Supreme Court in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 the appellant is entitled to an enhanced compensation on account of future prospects.

23. Since the monthly income of the appellant/claimant is increased to Rs.6,500/-, the loss of income during the period of treatment, is also to be enhanced and re-quantified as follows:-

$$\begin{aligned} (6,500 \times 6) &= \text{Rs.}39,000/- \\ &\text{instead of} \\ (5000 \times 6) &= \text{Rs.}30,000/- \end{aligned}$$

24. Since the claimant in the present case is incapable of getting employed as a parotta master, a further amount towards future prospect is to be added as per the decision of the Hon'ble Supreme Court in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210. Therefore, a sum of Rs.2,88,000/- towards permanent disability by Tribunal is re-quantified under the head of Loss of earning capacity and future prospectus as per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343. The compensation awarded on the other heads of compensation appear reasonable. Therefore, they are not disturbed. The calculation as per the said decision is as follows:-

Heads and Calculation	Compensation enhanced by this Court
# Monthly Income :Rs.6,500/-	
#Annual Income before the accident (6500 x 12) :Rs.78,000/-	
#Loss of future earning per annum at 30% (78,000 x 30/100) :Rs.23,400/-	
**Future Prospectus at 40% (23,400 x 40/100) :Rs. 9,360/-	
----- :Rs.32,760/-	
*Multiplier applicable with reference to the age : 35 (32,760 x 16) :Rs.5,24,160/-	Rs.5,24,160/-
Loss of income during the treatment for six months (6,500 x 6)	Rs. 39,000/-

Heads and Calculation	Compensation enhanced by this Court
Transport to Hospital	Rs. 5,000/-
Extra Nourishment	Rs. 8,000/-
Damage to clothing	Rs. 1,000/-
Attender charges	Rs. 20,000/-
Pain and Sufferings	Rs. 45,000/-
Total	Rs.6,42,160/-

As per the decision in Raj Kumar's case (supra).

* As per the decision in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

** As per the decision of the in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178.

25. Since appellant was found guilty of contributory negligence and this finding is not disturbed, there will a deduction of 30% from the enhanced amount as follows:-

Enhanced amount of compensation
(6,42,160 - 3,97,000) : Rs.2,45,160/-

Less: contributory negligence at 30%
(2,45,160 x 30/100) : Rs. 73,548/-

Total compensation payable to the appellant : Rs.1,71,612/-
Rounded off to Rs.1,72,000/-

26. The respondent is therefore directed to deposit the aforesaid enhanced amount of 1,72,000/- together with interest at 7.5% per annum, from the date of filing of the claim petition till the date of such deposit, within a period of six weeks from the date of receipt of a copy of this Judgment, before the Tribunal.

27. If the amount of compensation awarded by the Tribunal has not been deposited by the respondent, it is also directed to deposit the same together with interest as directed by the Tribunal, less if any amount already deposited, within the aforesaid period.

28. On such deposits, the appellant is permitted to withdraw the same together with interest, by filing suitable application before the Tribunal.

29. This Civil Miscellaneous Appeal stands partly allowed.
No cost.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accidents Claims Tribunal,
III Judge,
(Court of Small Causes),
Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.M.Swamikkannu, Advocate Sr.24662

C.M.A.No.922 of 2013

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