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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.3401 of 2019 and 1051 of 2020
and
C.M.P.No.20000 of 2019 in C.M.A.No.3401 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation (VPM Ltd)
Thiruvannamalai-2,
Villupuram

.. Appellant in C.M.A.No.3401/2019
& respondent in C.M.A.No.1051/2020
(Respondents)

vs

C.Dheena @ Dinesh ... Respondent in C.M.A.No.3401/2019
& appellant in C.M.A.No.1051/2020 (Claimants)

Prayer: Civil Miscellaneous Appeals filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.11.2018 passed in M.C.O.P.No.942 of 2016 on the file of Motor Accident Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai.

Appearance:

For appellant in C.M.A.No.3401/2019 : Mr.Vinod
for Mr.K.J.Sivakumar

For appellant in C.M.A.No.1051/2020 &
respondent in C.M.A.No.3401/2019 : Mrs.Ramya V.Rao

For respondent in C.M.A.No.1051/2020 : Mr.K.J.Sivakumar



COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

These matters are heard through Video Conferencing.

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2. For the sake of convenience, parties are referred to as 'Transport Corporation' and 'Claimant'.

3. Questioning the quantum of compensation awarded by the Tribunal in and by its judgment and decree dated 12.11.2018 passed in M.C.O.P.No.942 of 2016 on the file of Motor Accident Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai, transport corporation has filed C.M.A.No.3401 of 2019. Not being satisfied with the quantum of compensation, claimant has filed C.M.A.No.1051 of 2020.

4. The brief facts of the case are as follows:

On 08.07.2015 at about 23.45 hours, while the claimant was removing political party flags at Center median on the Tindivanam to Chennai road, GST Salai, near Killyar Bridge, a bus bearing Registration No.TN-25-N-0085, belonging to Transport Corporation, came in a rash and negligent manner and dashed against the claimant, due to which the claimant sustained grievous injuries all over the body. Hence, the claimant had filed a claim petition seeking compensation in a sum of Rs.30,00,000/-.

5. The said claim was resisted by Transport Corporation by filing a detailed counter statement inter alia contending that the accident had not occurred in the manner as projected by claimant. They have also denied the age, occupation and income of the claimant. It is the claim of Transport Corporation that the accident had occurred due to the negligence of the claimant, who was removing the political flags at night hours without due caution and without noticing the vehicles plying on the road. Therefore, the driver of the bus belonging to Transport Corporation cannot be held responsible for the accident. Thus, Transport Corporation prayed for dismissal of the claim petition.

6. To prove their claim, on the side of claimant, 2 witnesses were examined and 10 documents were marked as Exs.P1 to P10. On the side of Transport Corporation, 1 witness was examined and no exhibits were marked.

7. On appreciation of materials and the entire evidence on record, the Tribunal arrived at a finding that the claimant



also equally contributed to the accident and hence, fixed 50% contributory negligence on the part of the claimant. The compensation awarded by the Tribunal is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Compensation for continuing or permanent disability	4,50,000/-
2.	Compensation for the loss of future earning power	3,60,000/-
3.	Compensation for pain and suffering	25,000/-
4.	Loss of amenities & enjoyment of life	25,000/-
5.	Loss of earning and partial loss of earning	10,000/-
6.	Attender charges	10,000/-
7.	Transport to hospital	4,000/-
8.	Extra nourishment	4,000/-
	Total	8,88,000/-
	Less: Contributory negligence (50%)	4,44,000/-
	Compensation payable	4,44,000/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of deposit.

8. The main grievance of learned counsel appearing for Transport Corporation is that the Tribunal, having awarded a sum of Rs.3,60,000/- under the head 'compensation for loss of future earning power', ought not to have awarded a sum of Rs.4,50,000/- under the head 'compensation for continuing or permanent disability', which had resulted in awarding an exorbitant sum of Rs.8,88,000/- as total compensation. Thus, learned counsel prays for proper reduction of the compensation.

9. Per contra, learned counsel appearing for claimant submits that the Tribunal, while awarding compensation towards loss of future earning had not awarded any amount towards future prospects. That apart, Ex.P10 is the Disability Certificate issued by Government Peripheral Hospital, K.K.Nagar, in which the percentage of disability suffered by claimant is mentioned as 50%. However, the Tribunal had fixed the disability only at 20%, which had resulted in awarding an inadequate sum as compensation.



10. This Court has considered the rival submissions and perused the materials on record.

11. Since only the quantum of compensation is challenged in this appeal, this Court is not dealing with the other aspects of the award.

12. This Court finds some force in the submission of learned counsel appearing for Transport Corporation that the Tribunal, having awarded a sum of Rs.3,60,000/- under the head 'compensation for loss of future earning power', ought not to have awarded a sum of Rs.4,50,000/- under the head 'compensation for continuing or permanent disability'. Hence, the sum of Rs.4,50,000/- awarded under the head 'compensation for continuing or permanent disability' is set aside. At the same time, this Court finds that the Tribunal, while awarding compensation under the head 'loss of future earning power' has not awarded any amount towards future prospects. Further, this Court finds that the claimant had suffered the following injuries: (i) shaft of femur fracture in both legs (ii) fracture of right temporal bone underlying Heamatoma (iii) fracture of right temporal bone (iv) Pneumocephalus diffuse Cerebral edema and (v) fracture of acetabulum right. Considering the nature of injuries suffered by claimant, this Court is of the view that it would be appropriate to fix the disability at 50% as assessed by Doctor at Government Peripheral Hospital, K.K.Nagar. Accordingly, the compensation payable under the head 'loss of future earning power' is re-calculated as follows:

Monthly Salary	:Rs.	10,000/-
Add : Future Prospects		
40% of Rs.10,000/-	:Rs.	4,000/-

	Rs.	14,000/-
Annual Income	:Rs.	1,68,000/-
(Rs.14,000 * 12)		
Multiplier	:	x 18

	Rs.	30,24,000/-
Disability	:	50%

Loss of earning power	:Rs.	15,12,000/-



In all other aspects, the award of the Tribunal is hereby confirmed.

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13. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Award of the Tribunal (in Rs.)	Award of this Court (in Rs.)
1.	Compensation for continuing or permanent disability	4,50,000/-	-
2.	Compensation for the loss of future earning power	3,60,000/-	15,12,000 /-
3.	Compensation for pain and suffering	25,000/-	25,000/-
4.	Loss of amenities & enjoyment of life	25,000/-	25,000/-
5.	Loss of earning and partial loss of earning	10,000/-	10,000/-
6.	Attender charges	10,000/-	10,000/-
7.	Transport to hospital	4,000/-	4,000/-
8.	Extra nourishment	4,000/-	4,000/-
	Total	8,88,000/-	15,90,000 /-
	Less:Contributory negligence (50%)	4,44,000/-	7,95,000/-
	Compensation payable	4,44,000/-	7,95,000/-

In the result,

(i) C.M.A.No.3401 of 2019 is dismissed.

(ii) C.M.A.No.1051 of 2021 is partly allowed. The compensation of Rs.4,44,000/- awarded by the Tribunal is hereby enhanced to Rs.7,95,000/-. The Transport Corporation is directed to deposit the modified compensation of Rs.7,95,000/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of this judgment. On such deposit being made, the claimant is entitled



to withdraw the same together with interest, on due application.
No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(R)

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//True Copy//

Sub Assistant Registrar

gm

To

1.The, Principal Special Judge,
Special Court under E.C. & NDPS Act,
Motor Accident Claims Tribunal, Chennai.

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

+2cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.21644

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.21722

C.M.A.No.3401 of 2019 and 1051 of 2020

SV(CO)

CB(24/11/2021)