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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.1721 of 2016

and

MP No.1 of 2013

C.Santhakumar ... Appellant/Claimant

versus

The Managing Director,  
Tamilnadu State Transport Corporation,  
Madurai. ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the fair and decretal order passed by the learned Motor Accidents Claims Tribunal cum Sub Judge, Namakkal made in MCOP No.94/09 dated 09.12.2011

For Appellant : Mr.R. Vivek

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

JUDGMENT

(Heard Video Conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 09.12.2011 passed by the Motor Accident Claims Tribunal, Namakkal in MCOP No.94 of 2009.

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

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows :



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| Heads                        | Amount awarded by the Tribunal (Rs.) |
|------------------------------|--------------------------------------|
| Permanent Disability 45%     | 45,000/-                             |
| Pain and suffering           | 10,000/-                             |
| Loss of amenities            | 10,000/-                             |
| Medical bills                | 1,00,000/-                           |
| Transportation and nutrition | 5,000/-                              |
| Total                        | 1,70,000/-                           |

4. Heard Mr.R. Vivek, learned counsel for the appellant / claimant and Mr.C.S.K. Sathish, learned counsel for the respondent / Transport Corporation.

5. This Court has perused and examined the impugned award before the Tribunal.

6. The appellant / claimant has sustained following injuries as a result of an accident which happened on 06.04.2001 :

- a) Fracture in his left knee and left ankle and
- b) multiple grievous injuries all over his body.

7. The appellant / claimant was aged 23 years and he claims that he was a business Supervisor at M/s.Rasi's Screen Prints, earning Rs.6,000/-p.m., at the time of the accident.

8. Before the Tribunal, the appellant / claimant has filed six documents which were marked Exs.P1 to P6 and 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, the Driver of the bus which caused the accident has been examined as RW1, but no documents filed before the Tribunal.

9. The nature of injuries sustained by the appellant / claimant has not been disputed by the respondent / Transport Corporation before the Tribunal. The appellant / claimant has underwent three surgeries and has also been hospitalized on three occasions, the first period being from 21.08.2001 to 30.09.2001, the second period being from 06.02.2002 to 15.05.2002 and the third period being from 10.06.2002 to 01.07.2002. Due to the injuries, apart from various fractures he sustained, his leg has also been shortened by 3 1/4 inches. The Doctor (PW2) has assessed the permanent disability of the appellant / claimant at 45% and the Tribunal has awarded a disability compensation to the appellant / claimant at



Rs.45,000/- calculated at Rs.1,000/- per percentage of disability for the 45% disability. This Court is of the considered view that the appellant / claimant, who was a Supervisor and having sustained grievous injuries which resulted in him undergoing three major surgeries and being hospitalised for a very long period of time, the Tribunal ought to have adopted multiplier method for the purpose of assessing the loss of earning capacity instead the Tribunal has erroneously fixed the compensation for disability on percentage basis. The accident happened in the year 2001. After giving due consideration to the year of the accident, though the appellant / claimant has not produced any documentary evidence before the Tribunal to prove that he was a Supervisor and hence, this Court fixes his monthly income at Rs.2,000/-. The appellant / claimant was aged 23 years at the time of the accident, which has also not been disputed by the respondent / Transport Corporation. For a person aged 23 years, the correct multiplier applicable is 18. Even though the Tribunal has observed in the impugned award that the appellant / claimant has sustained grievous injuries and three surgeries have been performed on him as well as his long period of hospitalisation, the Tribunal failed to adopt the multiplier method. This Court considering the fact that in view of the grievous injuries, the appellant / claimant would have certainly lost his earning capacity.

10. For the foregoing reasons, the multiplier method is adopted by this Court instead of compensation fixed by the Tribunal for the appellant's / claimant's disability on percentage basis. Accordingly, the loss of earning capacity of the appellant / claimant is fixed by this Court at Rs.1,94,400/-, as detailed hereunder, instead of Rs.45,000/-, awarded by the Tribunal to the appellant / claimant towards the compensation for his disability.

$$\text{Rs.2,000/-} \times 12 \times 18 \times 45/100 = \text{Rs.1,94,400/-}$$

11. With regard to the other heads of compensation awarded by the Tribunal are concerned viz., Rs.10,000/- towards pain and suffering; Rs.10,000/- towards loss of amenities; Rs.1,00,000/- towards medical bills and Rs.5,000/- towards transportation is a just compensation and there is no scope for interference by this Court with regard to the said heads.

12. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :



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| Heads                                      | Amount awarded by the Tribunal (Rs.) | Amount awarded by this Court (Rs.) |
|--------------------------------------------|--------------------------------------|------------------------------------|
| Permanent Disability 45% / Loss of earning | 45,000/-                             | 1,94,400/-                         |
| Pain and suffering                         | 10,000/-                             | 10,000/-                           |
| Loss of amenities                          | 10,000/-                             | 10,000/-                           |
| Medical bills                              | 1,00,000/-                           | 1,00,000/-                         |
| Transportation and nutrition               | 5,000/-                              | 5,000/-                            |
| Total                                      | 1,70,000/-                           | 3,19,400/-                         |

13. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.1,70,000/- to Rs.3,19,400/-, as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

14. 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.94/09 on the file of the Sub Court, Motor Accidents Claims Tribunal, Namakkal, within a period of eight 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. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

Sd/-

Deputy Registrar(Spl cell CJ conf)

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The Subordinate Judge,  
Motor Accident Claims Tribunal,  
Namakkal.



2.The Section Officer,  
V.R. Section

High Court of Madras, Chennai - 104.

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CMA No.1721 of 2016

KK(CO)  
CB(20/10/2021)