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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2106 of 2018

Anthonisamy

...Appellant/Petitioner

Vs

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Villupuram Division, No.3/137, Salamedu,  
Vazhuthareddy & Psot, Villupuram District and Taluk,  
Tamil Nadu. ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 24.10.2017 made in M.C.O.P.No.725 of 2015 on the file of the Motor Accidents claims Tribunal, Principal Sub Judge, Puducherry.

For Appellant : Mr.T.Ananthasekar

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

#### JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 24.10.2017 made in M.C.O.P.No.725 of 2015 on the file of the Motor Accidents claims Tribunal, Principal Sub Judge, Puducherry.

2.The appellant is the claimant in M.C.O.P.No.725 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Puducherry. He filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.06.2015.

3.The facts of the case is that, on 21.06.2015 at about 00.15 hrs, when the appellant was travelling as a pillion rider



in the motor cycle bearing Registration No.PY - 01 CE 7734, which was driven by one Murugan, slowly by keeping extreme left from north to south direction with due care, a bus bearing Registration No.32 N 3405 belong to the respondent was driven by its driver in a rash and negligent manner and dashed against the motor cycle and thereby caused accident. Due to which the appellant sustained multiple grievous injuries. Thereafter, the appellant was admitted in hospital and took treatment as inpatient for a period of 1 month and till date he was taking treatment as outpatient. Therefore, the claimant filed a claim petition before the Tribunal claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the respondent and directed the respondent-Transport Corporation to pay a sum of Rs.2,75,000/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel for the appellant-claimant submitted that the Tribunal awarded a sum of Rs.1,95,000/- towards permanent disability. The claimant has sustained severe injury, therefore he admitted in the hospital and took continuous treatment for more than three months. The Medical Board assessed the disability of the appellant as 65%. The Tribunal has taken a sum of Rs.3,000/- per percentage of disability and awarded a sum of Rs.1,95,000/- towards disability. The appellant has suffered multiple grievous injuries and the amount awarded by the Tribunal towards permanent disability is very low. The Tribunal ought not to have awarded compensation on the basis of percentage method and the Tribunal ought to have applied multiplier method. It is a fit case to apply multiplier method. The avocation of the claimant at the time of accident was carpenter. Therefore, he earned a sum of Rs.700/- per day. However, no document has been produced. Hence, he prayed to re-determined the award of the Tribunal by applying multiplier method.

7.The learned counsel for the respondent submitted that the court has awarded a sum of Rs.1,95,000/- towards permanent disability. The Medical Board assessed 65% permanent partial disability. The Tribunal has also taken the 65% disability and awarded compensation. Thus, there is no error in this aspect. Therefore, he submitted that the award passed by the Tribunal may be confirmed.



9. Upon perusal of the record, it appears that the appellant was 28 years old at the time of accident. The avocation of the claimant was Carpenter. The claim was made that the claimant earned a sum of Rs.700/- per day before the accident. However, no proof was produced to substantiate the same. The discharge summary was marked as Ex.P7 and Outpatient case record of the appellant was marked as Ex.P14. A perusal of these documents shows that the injured has taken treatment from 2015 to 2017. A perusal of the Ex.P7-Discharge slip shows that the appellant has suffered Head injury, cut injury over occipital region, cut injury over left side below eye, crush injury over left leg, fracture of frontal bone, fracture of temporal bone, fracture of occipital bone, complex zygomatic fracture on the left side along with co fracture discontinuity in the infra border of the orbit present, fracture of coronoid process on the left side, fracture of mandible, fracture of left femur, fracture of left ankle, contusion over shoulder, swelling wound over forehead, sutured wound over left eyebrow, contusion over right thigh, deep lacerated wound over left hand, severe pain over right shoulder, facial injuries and eye affected, severe pain over back, all injuries are grievous in nature with permanent disability.

11. In the present case, the injury sustained by the appellant is severe in nature. He sustained cut injury and fracture all over the body. A perusal of Ex.P7/the discharge slip would show that the appellant was continuously taken treatment from 21.06.2015 to 20.07.15 thereafter from time to time upto the year of 2017. This Court also perused the out patient card marked as Ex.P14, which shows that the appellant has been continuously taking treatment, it also shows that injuries are very severe in nature. In such circumstances, the Tribunal ought to have applied multiplier method for awarding compensation towards permanent disability. However, it has failed to do so. This is a fit case to apply multiplier method for awarding compensation. The avocation of the appellant at the time of accident was carpenter. The claim was made on the side of the appellant that he was earning a sum of Rs.700/- per day. However, no proof was produced to substantiate the same. Therefore, this Court is not inclined to accept the submission



of the appellant that he was earning a sum of Rs.700/- per day. In the present case the accident is of the year 2015. The Hon'ble Supreme Court in the case of Syed Sadiq vs. Divisional Manager, United India Insurance reported in 2014 1 TNMAC 459 (SC) awarded a sum of Rs.6,500/- per month for the vegetable vendor for the accident occurred in the year 2008. By following the same yardstick, considering the increase in cost of living and considering the facts and circumstance of the present case, this Court is inclined to fix the notional income of the injured appellant as a sum of Rs.8,000/- per month. As held by the Hon'ble Supreme Court in the case of National Ins. Co. v. Pranay Sethi & others reported in 2017(2)TNMAC 609 (SC), when the multiplier method is applied, the Court supposed to have add certain percentage of amount towards future prospect. As held by in the case of Pranay Sethi stated supra, the Tribunal ought to have added 40% towards future prospect for the age group below 40. The multiplier applicable for the present case is 17. The Medical Board who examined the appellant assessed the disability at 65%. The Tribunal has taken the entire disability as 65% and awarded compensation. Since this Court applied multiplier method, this Court is inclined to take functional disability as 35%. Accordingly, the amount awarded by the Tribunal towards permanent disability is re-determined as follows:

$$\text{Rs.8,000/-} + \text{Rs.3,200/-} (40\% \text{ of Rs.8,000/-}) \times 12 \times 17 \times 35\% = \text{Rs.7,99,680/-}.$$

12.The amount awarded by the Tribunal under all the other heads are just and reasonable and the same is confirmed. Hence, the amount awarded by the Tribunal is modified as follows:

| S.No | Description                                | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) |
|------|--------------------------------------------|---------------------------------|-----------------------------------|
| 1.   | Pain and Sufferings                        | 40,000                          | 40,000                            |
| 2.   | Medical Expense                            | 5,000                           | 5,000                             |
| 3.   | Rich and nutritious Food                   | 5,000                           | 5,000                             |
| 4.   | Attendee Charges                           | 5,000                           | 5,000                             |
| 5.   | Transport Expenses                         | 10,000                          | 10,000                            |
| 6.   | Loss of Income                             | 15,000                          | 15,000                            |
| 7.   | Permanent Disability/Loss of Earning Power | 1,95,000                        | 7,99,680                          |
|      | Total                                      | 2,75,000                        | 8,79,680                          |



13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,75,000/- is hereby enhanced to Rs.8,79,680/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire award amount, along with interest and costs, less the amount if any, already withdrawn. The Tribunal is directed to transfer the entire award amount to the appellant by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application made by the appellant for withdrawal, whichever is later. No costs.

Sd/-  
Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,  
The Principal Sub Judge, Puducherry.

C.M.A.No.2106 of 2018

VSN II(CO)  
GMY(08/11/2021)