



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2021

Pronounced on : 12.02.2021

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Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.175 of 2017

Selvaraj,
S/o.Virudhachalam,
No.14-D, Sannathi Street,
Thirupapuliyur,
Cuddalore N.T.

... Appellant/Petitioner

/versus/

1. K.Palaniammal,
W/o.A.Krishnamurthy,
No.17/B, Gandhi Nagar II,
Vriddachalam.

2. The United India Insurance Company,
Nethaji Road,
Cuddalore - 1.

3. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram.

(Notice is dispensed with for Respondents 1 & 3).

... Respondents/Respondents

Prayer:Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.149 of 2004, dated 31.07.2006 on the file of the Motor Accidents Claims Tribunal, Cuddalore, for enhancement of compensation.

For Appellant : Mr.R.Muralidaran

For R2 : Mr.D.Bhaskaran

For R1 & R3 : Dispensed with

J U D G M E N T

The Appeal is filed by the claimant for enhancement of compensation.

2. The short facts of the case is that, on 10.08.2003 the



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petitioner along with his wife Rajalakshmi, Thirugnanasambandam and Thaiyal Nayaki was travelling in Ambassador car bearing registration No.TN-49-X-1071 and proceedings towards Kadambur. Near Pethanayakkankuppam, at about 6.30 a.m. the driver of the Ambassador car rash and negligently dashed against the Transport Corporation Bus bearing registration No.TN-32-N-1161. The accident occurred due to the negligence of the car driver as well as the Transport bus driver. In the said accident, the petitioner sustained injury, one the occupant Thirugnanasambandam died. The petitioner herein was admitted in the hospital for treatment. For one month, he was under treatment as inpatient and thereafter, continue to take treatment as out-patient for his communitied fracture of right Pelvis, hip and fracture of left clavicle bone. Due to the said injury, the claimant was not able to walk, stand and board bus. His normal life is affected in spite of best treatment. As a secondary grade teacher, is not able to discharge his job and therefore, there is loss of income. Claiming Rs.5,00,000/- as compensation. Petition was filed against the owner of the car, its insurer and the Managing Director of the Transport Corporation.

3. The Transport Corporation filed counter stating that the driver of the Transport bus diligently driving his bus and it was the negligence of the car driver, who came in the opposite direction in a zigzag manner and dashed against the bus. F.I.R was registered against the car driver since the Transport bus driver is no way responsible for the accident.

4. The 2nd respondent, in his counter, denied the averments made in the petition and liability to compensate the claimant. According to the 2nd respondent, who is the insurer of the Ambassador car, the car driver had no valid driving license and the car had no valid permit. The income, age and occupation of the petitioner were denied.

5. The Tribunal, after going through the evidence and pleadings held the accident occurred due to rash and negligently driving of the car driver. On considering the medical records and the evidence of P.W.7 Dr.Nandakumar, disability certificate Ex.P.50 awarded a sum of Rs.1,24,000/- as compensation.

6. In the appeal, the claimant had stated that the said award is very less for the injury sustained. The Doctor has assessed 60% disability. The Tribunal has awarded only Rs.60,000/- for the permanent disability, it ought to have applied multiplier method and awarded compensation since the injury sustained by the claimant has caused functional disability. The medical records pertaining to this claimant are Ex.P.21 the O.P.Chit issued by the Government Hospital, Cuddalore and the Accident Register report marked as Ex.P.22 indicate the claimant has sustained following injuries.



- (i). Tenderness of right hip joint.
- (ii). Two abrasions right fore arm 2cm x 1 cm.
- (iii). Contusion right hand 4cm x 4 cm.
- (iv). Lacerated injury (not clear) 2cm x 1cm x 1 cm.

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7. The discharge summary (Ex.P.23) of the claimant issued by Krishna Hospital, Cuddalore, reveals that, he was admitted in the hospital on 10.08.2003 and got discharged on 10.09.2003. The course of treatment given to him is stated as:- "For Central Fracture dislocation (R) Hip with displacement of Acetabulum Fragments. Initially he was given Upper Tibial Pin Traction and then Fracture dislocation reduction done with Acetabulum Fixed on 21.08.2003. Under Spinal Anaesthesia Fixation stable. Traction continued for 10 days and then Hip Mobilisation (R) side starting. Also he sustained Fracture Clavicle (L) side for which conservative treatment applied. Strapping given. On Discharge:

Fracture Healing well. Pain reduced. Mobilization (R) Hip after walking exercise - 3 times."

8. One of the Doctor, who has treated the claimant was examined as P.W.7. He had deposed that due to injury, the claimant's mobility to run, walk and stand are curtailed. The fracture of clavicle bone is mal-united and bend noticed on his right ring finger. He has also suggested knee replacement due to lack of blood circulation in his left thigh bone portion. The Doctor has assessed the claimant has sustained 60% permanent disability. The Tribunal taking note of the admission by the claimant that there is no future loss of income to him, except availing 120 days medical leave for his treatment, held that there is no loss of income either during treatment period or thereafter.

9. The Tribunal, after considering the evidence had fairly awarded a sum of Rs.60,000/- for the alleged disability, taking into account, the disability assessed by the doctor as 60% permanent disability. The accident occurred in the year 2003, the fixation of Rs.1,000/- per percentage of disability is fair and adequate. The disability caused by injuries are not scheduled injury or a total permanent disability, unless, there is evidence to show that the permanent injury has led to loss of income. There is no justifiable reason to apply multiplier method. There is also no medical record to show that there was further treatment to the claimant. Hence, the plea to award Rs.1,00,000/- towards future treatment is unsustainable.

10. On considering the evidence and plea of the appellant, this Court finds that, it would be suffices to award an additional compensation of Rs.10,000/- for loss of amenities and Rs.5,000/- for attendant charges. Hence, the award of the Tribunal is modified as below:-



Sl. Nos	Compensation under various heads	Award passed by this Court
1.	Permanent Disability	Rs.60,000
2.	Medical Bills	Rs.51,885.90
3.	Pain and Sufferings	Rs.10,000
4.	Transport Charges & Extra Nourishment	Rs.2,000
5.	Loss of Amenities	Rs. 10,000
6.	Attendant Charges	Rs.5,000
	Total	Rs.1,38,885/-

Rounded off to Rs.1,39,000/-

11. The award of the Tribunal is enhanced from Rs.1,24,000/- to Rs.1,39,000/- with interest at the rate of Rs.7.5% p.a from the date of petition (23.12.2003) till the date of realisation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount with interest, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the modified award amount, on filing proper application.

12. Accordingly, the Civil Miscellaneous Appeal is Partly-Allowed. No costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

bsm

To

1.The Motor Accidents Claims Tribunal,
Principal District Judge, Cuddalore.

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

+1cc to Mr.R.Muralidharan, Advocate, S.R.No.9027

C.M.A.No.175 of 2017

NRL(CO)
SB(03/09/2021)