



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 22.09.2021
Delivered On : 26.11.2021
CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI
C.M.A.(MD)No.1147 of 2013

Maruthavanam .. Appellant/ Claimant
Vs.

1.Andhra Pradesh Transport
Tourism Development Corporation,
Rep. By its Divisional Manager,
C.R.O., T.T.D. Choultry-1, T.P. Area,
Tirupati - 517 501.
Andhra Pradesh.

2.National Insurance Company Ltd.,
rep. By its Divisional Manager,
No.157-A, 1st Floor,
Peddakapu Layout,
Tirupati - 517 501.
Andhra Pradesh.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decretal order made in M.C.O.P.No.696 of 2002 dated 19.03.2004 by the learned Motor Accident Claims Tribunal, (Additional District Court/Fast Track Court No.1), Thanjavur.

For Appellant	: Mr. V.Balaji
For 2 nd Respondent	: Mr.R.Srinivasan
For 1 st Respondent	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.696 of 2002 dated 19.03.2004, on the file of the Motor Accident Claims Tribunal/Additional District Judge/Fast Track No.1, Thanjavur.

2.The appellant herein is the claimant and the respondents herein are the respondents in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.696 of 2002, claiming compensation for the injuries sustained by him, in an accident that took place on 29.04.2002. The Tribunal has awarded a sum of Rs.98,500/- (Rupees Ninety Eight Thousand and Five Hundred only) as compensation. Against which, the appellant has preferred this appeal for enhancement of compensation.



3. Brief substance of the claim petition in M.C.O.P.No.696 of 2002 is as follows:

On 29.04.2002, at about 04.00 a.m., the petitioner travelled in a bus bearing registration No. TN-9-W-1032 that belong to the first respondent. The driver of the bus drove the vehicle in a rash and negligent manner and dashed against a tree. The petitioner was admitted in Venkateshwara Hospital, Tirupathi and then he took treatment in Christian Hospital, Vellore. The petitioner is permanently disabled and he claimed a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation.

4. Brief substance of the counter filed by the first respondent therein is as follows:

The accident did not take place due to the rash and negligent driving of the bus driver. The petitioner has to prove the manner of the accident, injuries, disability and the medical expenses. The claim is excessive.

5. Brief substance of the counter filed by the second respondent therein is as follows:

The bus driver is not responsible for the accident. Due to unexpected situation, the accident has taken place. There is no disability. The petitioner has to prove the manner of treatment, medical expenses, age and loss of income. The claim is excessive.

6. On the side of the claimant, two witnesses were examined and 12 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.98,500/- (Rupees Ninety Eight Thousand and Five Hundred only) as compensation to be paid by the second respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal for enhancement of the award.

7. On the side of the appellant, it is stated that the Tribunal failed to consider the medical expenses and has awarded a very low amount towards medical expenses. The appellant is suffering from periodical eplipse and that resulted in, 30% of total disability. The evidence of P.W.2 proves that the appellant is suffering from periodical eplipse. The Tribunal is wrong in reducing the disability to 25%. The appellant has studied Catering Technology and he was working as the Pastry Cook in Royal Caribbean International, Miami, Florida, U.S.A. He was getting a salary of Rs.60,000/- (Rupees Sixty Thousand only) per month. But the Tribunal has fixed the notional income at Rs.1,500/- (Rupees One Thousand and Five Hundred only). There is no possibility of working in America and getting a salary of Rs.1,250/- (Rupees One Thousand Two Hundred and Fifty only) per month. The Tribunal failed to consider Ex.P10, medical bills. The appellant took treatment at Tirupathi and at



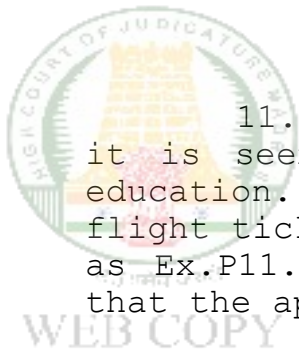
expenses and the Tribunal failed to consider the same.

8.On the side of the appellant, it is stated that future prospects was not considered by the Tribunal. In support of this contention, a judgment of this Court in the case of the **Managing Director, KSRTC Ltd., v. S.Muralidhar Reddy** reported in **2019 (5) L.W. 90** is cited.

9.On the side of the second respondent, it is stated that the occurrence took place in the year 2002. The award was passed in the year 2004. The Tribunal is wrong in applying multiplier method. A judgment of the Hon'ble Supreme Court in the case of **Rajkumar v. Ajaykumar** reported in **2011 (1) SCC 343** is cited, wherein the Hon'ble Supreme Court has made an observation that in an injured case, the Tribunal has to fix whether injuries are permanent or temporary in nature and whether there is functional disability. The judgment reads as follows:

"9.Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the Tribunal should consider and decide with reference of the evidence: (i)whether the disablement is permanent or temporary; (ii)if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii)if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

10.On the side of the appellant, it is stated that due to the injuries on the forehead of the appellant, he is still suffering. On the side of the second respondent, it is stated that the injuries were not affecting the earning capacity of the appellant. There was no evidence regarding the inability of the appellant to attend any work. The disability is fixed as 30%. The claimant is entitled to Rs.90,000/- (Rupees Ninety Thousand only) for the disability.



11. There is no dispute regarding the liability. From Ex.P4, it is seen that the appellant has completed catering technology education. The passport copy was marked as Ex.P6 and the copy of flight ticket was marked as Ex.P9. The appointment letter was marked as Ex.P11. From Ex.P4, Ex.P6, Ex.P8, Ex.P9, Ex.P11, it is decided that the appellant had a job opportunity in USA.

12. Hence, the salary fixed by the Tribunal has to be enhanced. The notional monthly income of the appellant is fixed as Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month. The temporary loss of income for the period of treatment and rehabilitation is fixed as Rs.45,500/- (Rupees Forty Five Thousand and Five Hundred only). The awarded passed by the Tribunal for pain and suffering (Rs.10,000) and for loss of amenities (Rs.10,000) are reasonable. The Tribunal has awarded a sum of Rs.32,750/- (Rupees Thirty Two Thousand Seven Hundred and Fifty only) towards medical expenses. The same is rounded off to Rs.33,000/- (Rupees Thirty Three Thousand only). The claimant is entitled for a sum of Rs.10,000/- (Rupees Ten Thousand only) towards extra nourishment, Rs.5,000/- (Rupees Five Thousand only) towards transport expenses, Rs.4,500/- (Rupees Four Thousand and Five Hundred only) towards attendant charges. In total, a sum of Rs.2,08,000/- (Rupees Two Lakhs and Eight Thousand only) is awarded as compensation.

13. Hence, it is decided that the appellant is entitled to a sum of Rs.2,08,000/- (Rupees Two Lakhs and Eight Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

14. The second respondent is directed to deposit Rs.2,08,000/- (Rupees Two Lakhs and Eight Thousand only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellant is permitted to withdraw the award amount with interest after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. The appellant is directed to pay extra Court fee, if any. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs.

Sd/-

Assistant Registrar (CS-II)

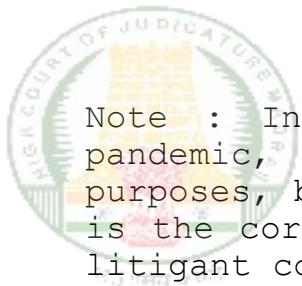
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Sub Assistant Registrar(CS)

MRN

<https://hcservices.ecourts.gov.in/hcservices/>



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To
1.The Motor Accidents Claims Tribunal, Additional District Judge/Fast Track No.I,
Thanjavur.

copy to:

1.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

2.The sub Assistant Registrar,
A.E. Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R. SRINIVASAN, Advocate (SR-36139[F] dated 26/11/2021)

+1 CC to M/s.V. BALAJI, Advocate (SR-36450[F] dated 30/11/2021)

C.M.A. (MD)No.1147 of 2013
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RD(04.02.2022) 5P 7C