



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 09.03.2021
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A(MD)No.1534 of 2010

WEB COPY

Subramanian @ Balasubramanian

.. Appellant/Petitioner

vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam (Division 2),
Periyamilaguparai,
Trichy.

..Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 18.12.2008 made in MCOP No.1868 of 2005 on the file of the Motor Accident Claims Tribunal-cum-Principal Subordinate Judge, Dindigul.

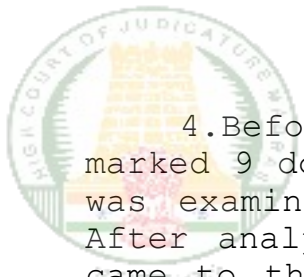
For Appellant : Mr.M.Siddharthan
For Respondent : Mr.PM.Vishnuvarthanan

J U D G M E N T

Being dissatisfied with the award passed by the Motor Accident Claims Tribunal-cum-Principal Subordinate Judge, Dindigul in MCOP No.1868 of 2005, the claimant has come up with this appeal seeking enhancement of compensation.

2.The facts in brief is that on 29.11.2004 at 10.45 a.m, the claimant was proceeding in his bicycle on Anna Road in Trichy. At that time, a bus bearing registration No.TN-45-N-1232, which was driven by its driver in a rash and negligent manner, hit against him. In the accident, he sustained multiple injuries all over his body and he was immediately taken to ABC Hospital, Trichy. Further case of the claimant is that he was 29 years old at the relevant point of time and he was working as a Tailor and thereby earning Rs.5,000/- per month and hence, he is entitled for Rs.8,00,000/-.

3.The respondent Transport Corporation resisted the claim disputing the age, income and avocation of the claimant. According to the Transport Corporation, the driver was driving the bus slowly and carefully, but the claimant, who was riding his bicycle, suddenly attempted to cross the road and invited the accident. Hence, the Transport Corporation is not liable to pay any compensation. It is also stated that the claim was exorbitant and excessive.



4.Before the Tribunal, the claimant examined 3 witnesses and marked 9 documents and on the side of the respondent, one Dinakaran was examined as R.W.1, but no documentary evidence was produced. After analyzing the evidence adduced by the parties, the Tribunal came to the conclusion that the driver of the bus was responsible for the accident and awarded Rs.2,02,150/- with 7.5% interest. Seeking enhancement of compensation, the claimant has come with this appeal as stated supra.

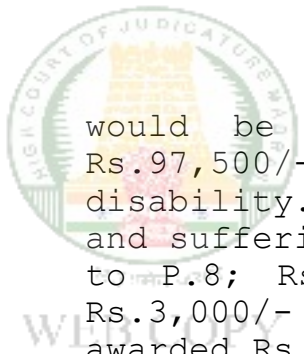
5.Mr.M.Siddharthan, learned counsel appearing for the appellant would argue that the claimant has suffered multiple injuries and his total disability was assessed at 86%. It is also contended that in view of the injuries sustained by the claimant, he is not able to do his regular work of Tailoring and hence, the Tribunal ought to have applied multiplier to assess the loss of income. Instead, the Tribunal has applied Rs.1,500/- per percentage. The learned counsel would further submit that in view of the injuries sustained by the claimant, he is affected by fits and he is taking treatment for the same.

6.Per contra, Mr.P.M.Vishnuvarthanan, learned counsel for the respondent/Transport Corporation argued and justified the conclusion reached by the Tribunal and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.In the matter on hand, finding of the Tribunal that the accident had occurred due to the negligence of the driver has become final as no appeal has been preferred by the respondent challenging the said finding. Insofar as the quantum is concerned, the claimant in his evidence has categorically stated that he was a Tailor by profession and in view of the injuries sustained in the accident, he is not able to do his regular work. P.W.2 Dr.V.R.Ravi and P.W.3 Dr.Muralidaran have given evidence stating that the claimant sustained fracture on the left shoulder and in the head and underwent surgery for the injuries sustained in the spleen. Ex.P.2-Wound Certificate reveals the injuries sustained by the claimant. P.W.2 Dr.Ravi (Ortho) issued disability certificate (Ex.P.4) stating that the claimant sustained 58% permanent disability. P.W.3 Dr.Muralidaran (Neurologist) assessed disability at 28% and issued disability certificate (Ex.P.8). The evidence of P.Ws.1 to 3 and Exs.P.4 and P.8 would show that the claimant suffered total disability of 86% and lost his earning capacity. So, I am of the view that this is the fit case for applying multiplier.

9.Though the claimant has stated that he was earning Rs.5,000/- per month, but no documentary evidence was produced in support of his claim. So, it would be appropriate to fix notional income at Rs.2,000/- per month and by applying multiplier '17', the claimant



would be entitled Rs.4,08,000/-(2000 x 12 x 17) instead of Rs.97,500/- which has been awarded under the head of permanent disability. Further, the Tribunal has awarded Rs.10,000/- for pain and suffering; Rs.81,650/- for medical expenses based on the Exs.P.3 to P.8; Rs.5,000/- for nutrition; Rs.5,000/- for transportation; Rs.3,000/- for attendant charges. In total, the Tribunal has awarded Rs.2,02,150/-. While enhancing the award amount in respect of loss of earning, the amount awarded under other heads are confirmed. Hence, the award amount is enhanced to Rs.5,12,650/- from Rs.2,02,150/-. For the enhanced amount, the appellant/claimant is entitled for interest at 6% per annum only from the date of admission of the appeal till the date of realization.

10.In the result, this Civil Miscellaneous Appeal is allowed. The respondent/Transport Corporation is directed to deposit the above award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

skn

To

1.The Principal Subordinate Judge,
The Motor Accident Claims Tribunal
Dindigul.

2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.SIDDHARTHAN, Advocate (SR-9983[F] dated 10/03/2021)

+1 CC to M/s.P.M.VISHNU VARTHANAN, Advocate (SR-10473[F] dated 11/03/2021)

C.M.A(MD)No.1534 of 2010
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PM(CO)

KB(24.05.2021) 3P 6C

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