BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 17.04.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.1740 of 2010
and
M.P(MD)No.1 of 2014

Sarasammal .. Appellant/Claimant

vs.

Tamil Nadu State Transport Corporation Ltd.,
Through its General Manager,
Ranithottam,
Nagercoil. ...Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree made in MCOP No.22 of 2009 on the file of the Motor Accident Claims Tribunal (Additional Sub-Judge), Tirunelveli dated 07.04.2010.

For Appellant : Mr.T.Selvakumaran
For Respondent : Mr.P.Prabhakaran

J U D G M E N T

The appellant challenges the award passed by the Motor Accident Claims Tribunal, Additional Sub-Court, Tirunelveli in MCOP No.22 of 2009.

2.The claimant has come up with this appeal seeking enhancement of compensation. This is case of injury. On 10.11.2008, the claimant was a passenger in a bus belonging to the respondent Transport Corporation and it met with an accident, in which, she sustained fracture and multiple injuries. Though she claimed Rs.20,00,000/- as compensation, the Tribunal has awarded Rs.5,01,414/- together with interest at 8% per annum.

3.It is the contention of the learned counsel for the appellant that since the award of the Tribunal is meager in all the heads, the claimant is entitled for higher compensation.

4.Per contra, the learned counsel appearing for the respondent Transport Corporation submitted that the Tribunal has awarded excess compensation without deducting the amount of Rs.2,00,000/- paid to the claimant under health insurance scheme. In this regard, the learned counsel placed reliance on the decision of the Hon'ble Apex Court reported in **2020 Latest case law 27 SC (National Insurance Company Ltd. vs. Birender).** It is also brought to the notice of this Court that the claimant herein admitted that even after the accident, there was no loss of income and she is regularly attending her duties.

5.This Court carefully considered the rival submission of the learned counsels appearing on either side and perused the materials available on record.

6.It is not in dispute that the appellant sustained injuries in the accident that had taken place on 10.11.2008. The finding of the Tribunal that the accident occurred due to the negligence of the driver of the Transport Corporation has become final and hence, it need not be adverted to in the appeal. With regard to the quantum, P.W.2 Dr.Ramaguru has stated that the claimant suffered 90% disability, but the Tribunal has taken disability as 80%. Exs.P.6, P.9 to P.12, P.14 and P.15 have been produced to show that the claimant had spent Rs.3,41,905/- towards medical expenses. It is not in dispute that the claimant had taken a health insurance policy and the Insurance Company has paid Rs.2,00,000/- to the hospital. So, the balance amount of Rs.1,24,550/- was paid by the claimant, but the Tribunal has awarded the entire amount of Rs.3,41,905/-.

7.The learned counsel for the appellant submitted that the amount paid for medical claim by the insurance company cannot be deducted from the total medical expenses. In support of his arguments, he relied on the decision of the Calcutta High Court reported in **2019 ACJ 1532 (New India Assurance Co., Ltd. Bimal Kumar Shah).** It is relevant to note that the Division Bench of the Calcutta High Court, in paragraph 24, has taken the view that the Tribunal was justified in not deducting the amount received under mediclaim policy from the compensation admissible under the Motor Vehicles Act observing that there is no decision of the Hon'ble Supreme Court directly on this point. However, subsequently, in the case referred by the learned counsel for the respondent, the Hon'ble Supreme Court, in para 22, has observed that any amount received towards financial assistance will have to be deducted from the compensation amount determined in terms of this order. It is relevant to note that the claimant in that case was paid Rs.7,000/- per month towards pension. The Tribunal failed to deduct that amount from the loss of dependency. The relevant para 22 of the said Judgment in **2020 Latest case law 27 SC** (supra) would run thus:-

> "22. Considering the above, respondent Nos. 1 and 2 would be entitled for compensation to be reckoned on the basis of loss of dependency, due to loss of gross salary (less tax amount, if any) of the deceased and future prospects and deduction of only onethird (1/3 rd) amount towards personal expenses of the deceased. As regards the multiplier '13' applied by the Tribunal and the High Court, the same needs no interference. As a result, on the facts and in the circumstances of this case, the amount payable towards compensation will have to be recalculated on the following basis:
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> Loss of dependency due to loss of income calculated at Rs.31,26,229.60/ [(Rs.23,123/ x 12 x 13) + (30% future prospects) - (1/3rd deduction for personal expenses)]. In addition, the claimants would be entitled for a sum of Rs.70,000/ towards conventional heads in terms of dictum in paragraph 59.8 of ***Pranay Sethi*** (supra). Thus, a total sum of Rs.31,96,230/ (Rupees thirtyone lakhs ninetysix thousand two hundred thirty only), as rounded off, is payable to the claimants.
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> However, this amount alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till payment, will be payable subject to the outcome of the application made by the respondent Nos. 1 and 2 to the competent authority for grant of financial assistance under the 2006 Rules. If that application is allowed and the amount becomes payable towards financial assistance under the said Rules to the specified legal representatives of the deceased, commensurate amount will have to be deducted from the compensation amount alongwith interest component thereon. The respondent Nos. 1 and 2, therefore, can be permitted to withdraw the compensation amount only upon filing of an affidavitcum declaration before the executing Court that they have not received nor would claim any amount towards financial assistance under the 2006 Rules and if already received or to be received in future on that account, the amount so received will be disclosed to the executing Court, which will have to be deducted from the compensation amount determined in terms of this order. The compensation amount, therefore, be paid to the respondent Nos. 1 and 2 subject to the above and upon giving an undertaking before the executing Court to indemnify the insurance company (appellant) to that extent."

8.In my considered view, the same principle would apply to the case on hand. Since no appeal has been preferred by the respondent Transport Corporation challenging the award of the Tribunal, this Court refrains from interfering with the order of the Tribunal. In the light of the admission made by the claimant in the cross examination that even after the accident, she was regularly doing her duty and receiving regular salary, I am of the view that she is not entitled for enhancement of compensation in this appeal.

9.For the foregoing reasons, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Additional Sub-Judge,
Motor Accident Claims Tribunal
Tirunelveli.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T.SELVAKUMARAN, Advocate (SR-16643[F] dated 20/04/2021)

+1 CC to Mr.P.PRABHAKARAN, Advocate (SR-16410[F] dated 19/04/2021)

JUDGMENT MADE IN
C.M.A(MD)No.1740 of 2010
and
M.P(MD)No.1 of 2014
17.04.2021

KM(04.06.2021) 4P 6C