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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:24.11.2021

PRONOUNCED ON: 17.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.Nos.1323 & 1531 of 2018

N.Sivakumar ... Appellant in CMA No.1323/2018

N.Arjunan ... Appellant in CMA No.1531/2018

Vs.

The Managing Director,
TNSTC (Villupuram Divisional - I),
No.3/137, Salamedu, Vazhudhareddy Post,
Villupuram 605 602. ... Respondent in both appeals

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 28.02.2018 made in M.C.O.P.Nos.3146 & 3147 of 2012 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Cuddalore.

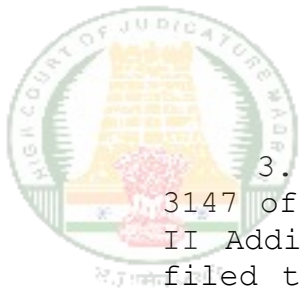
For Appellant in both appeals : Mrs.Ramya V. Rao
For Mr.R.Sreedhar

For Respondent in both appeals : Mr.K.J.Sivakumar

COMMON JUDGMENT

This Civil Miscellaneous Appeals have been filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 28.02.2018 made in M.C.O.P.Nos.3146 & 3147 of 2012 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Cuddalore.

2. Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgement. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.



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3. The appellants are the claimants in M.C.O.P.Nos.3146 & 3147 of 2018 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Cuddalore. The appellants have filed the said claim petitions claiming a sum of Rs.40,00,000/- and Rs.20,00,000/- respectively as compensation for the injuries sustained in the accident that took place on 21.11.2012 against the respondent/Transport Corporation.

4. According to the claimants, on 21.11.2012 at about 3.00 hours when the appellant in CMA.No.1323/2018 who is the rider of his Hero Honda Splender motorcycle bearing registration No.PY 01 AY 7084 and the appellant in CMA No.1531/2018 being the pillion rider, proceeding from South to North in extreme left near Rajapalayam on Chennai Salai, the respondent's TNSTC Bus bearing registration No.TN 32 N 3310 came from the opposite direction at a great speed in a rash and negligent manner and dashed against the appellants motorcycle due to which, the appellants sustained grievous injuries. Immediately they were admitted into the Government Headquarters Hospital, Cuddalore for initial treatment and for further treatment they were admitted into Government Stanley Hospital, Chennai.

5. The respondent/Transport Corporation filed counter affidavit and denied all the averments made by the claimants. The respondent / Transport Corporation denied the manner of accident as alleged by the claimants. It is stated that the accident has not occurred due to the negligence on the part of the driver of the respondent/Transport Corporation. The alleged accident had happened only due to the rash and negligent act of the two wheeler bearing registration No.PY 01 AY 7084 rider/appellant and the appeals are bad for non-joinder of necessary parties. The appellant/rider of the two wheeler did not possess valid driving license and also failed to wear helmet during the time of accident. Hence, the respondent/Transport Corporation is not liable to pay any compensation to the claimants. The respondent/Transport Corporation also denied the age, occupation, monthly income, the nature of the alleged injuries sustained by the appellants, the period of treatment, medical expenditure and the percentage of disability suffered by them. In any event, the quantum of compensation claimed by the claimants is highly excessive and prayed for dismissal of the claim petitions.

6. Before the Tribunal, the claimants examined themselves as P.W.1 and P.W.2 and 19 documents were marked as Exs.P1 to P19. On the side of the respondent no witness was examined and no documents were marked. The Disability Certificates were marked as Exs.C1 and C2 as Court Documents.



7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent / Transport Corporation and directed the respondent / Transport Corporation to pay a sum of Rs.12,64,000/- as compensation to the appellant in MCOP No.3146/2012 and to pay a sum of Rs.2,82,000/- as compensation to the appellant in MCOP No.3147/2012.

8. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeals seeking enhancement of compensation.

9. The learned counsel appearing for the appellant in CMA No.1323/2018 contended that in the accident the appellant suffered amputation of left leg below knee and fracture of shaft of femur bone middle 1/3rd. The Medical Board examined the appellant and certified that the appellant suffered 65% of permanent disability and disability certificate was marked as Ex.C1. The appellant was working as lorry driver and was earning a sum of Rs.20,000/- per month. The Tribunal ought to have fixed the monthly income of the appellant at Rs.20,000/- and granted compensation. The appellant has taken treatment as inpatient at Government Stanley Hospital for more than 70 days from 22.11.2012 to 04.02.2013. The Tribunal failed to grant any compensation towards future prospects, damages to clothes and future medical expenses. The amounts awarded by the Tribunal towards various heads are meager and prayed for enhancement of compensation.

10. Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal accepted the disability certificate issued by the Medical Board and considering the functional disability caused to the claimant in MCOP No. 3143 of 2012 taking 100% functional disability awarded a sum of Rs.11,70,000/- as compensation towards loss of earning capacity. In the absence of any material evidence with regard to avocation and income, a sum of Rs.6,500/- per month was fixed by the Tribunal as notional income is excessive. In any event, the total compensation awarded by the Tribunal at Rs.12,64,000/- to the claimant in MCOP No. 3143 of 2012 is highly excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeals.

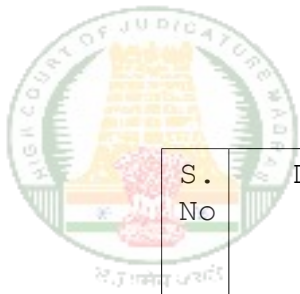


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11. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent/Transport Corporation and perused the entire materials on record.

12. In CMA No.1323/2018, from the materials available on record, it is seen that it is the contention of the appellant that in the accident he suffered amputation of left leg below knee and fracture shaft of femur bone middle 1/3rd. To prove the same, the appellant examined himself as P.W.1. The Medical Board examined the appellant and certified that he suffered 65% disability and issued Ex.C1/disability certificate to that effect. The Tribunal concluded that due to the accident, the appellant suffered functional disability and therefore, the disability was treated as 100% loss of earning capacity and awarded compensation. Even though the appellant suffered amputation of left leg and fracture and the Medical Board assessed the disability at 65%, the Tribunal without considering the same increased the percentage of disability from 65% to 100% and it is not correct. Therefore, this Court is of the view that the disability of the appellant shall be fixed at 80% which would meet the ends of justice.

13. The Tribunal ought to have awarded future prospects but it was not granted and hence, this Court award future prospects by calculating 40%. Considering the age of the deceased, the Tribunal has rightly applied multiplier '15'. It is the contention of the appellant that he was working as lorry driver and was earning a sum of Rs.20,000/- per month but he failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the appellant and awarded compensation towards loss of income for twelve months. The accident occurred in the year 2012 and the notional income fixed by the Tribunal is meager. Therefore, a sum of Rs.9,000/- per month is fixed as notional income of the appellant. Hence, the amounts awarded by the Tribunal towards loss of earning capacity is modified to Rs.18,14,400/- [Rs.12,600 (Rs.9,000/- + Rs.3,600/- (40% of 9,000) X 12 X 15 X 80/100]. The amount awarded by the Tribunal under various heads are just and reasonable and hence, there is no modification. Thus, the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	Rs.11,70,000/-	Rs.18,14,400/-	Enhanced
2.	Transport to hospital	Rs.5,000/-	Rs.5,000/-	Confirmed
3.	Special Diet	Rs.10,000/-	Rs.10,000/-	Confirmed
4.	Pain and sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
5.	Loss of amenities for whole body	Rs.25,000/-	Rs.25,000/-	Confirmed
6.	Attendant charges	Rs.4,000/-	Rs.4,000/-	Confirmed
	Total	Rs.12,64,000/-	Rs.19,08,400/-	Enhanced by Rs.6,44,400/-

14. The learned counsel appearing for the appellant in CMA No.1531/2018 would contend that in the accident, the appellant suffered grievous injuries and the Medical Board assessed the disability as 33%. The Tribunal has awarded only Rs.99,000/- towards disability by fixing a sum of Rs.3,000/- per percentage of disability. Due to the injuries, the appellant could not continue his work as he was doing earlier. The Tribunal ought to have adopted the multiplier method for granting compensation. It is further submitted that at the time of accident, the appellant was working as Brick Kiln Maistry, Sugarcane cutter and House Keeping servant (maid Assistant) and was earning a sum of Rs.20,000/- per month. The Tribunal has fixed a meager amount of Rs.6,500/- per month as monthly income of the appellant and awarded very less compensation. Due to the injuries, the appellant was admitted at the Government Stanley Hospital, Chennai and Srimanakula Vinayagar Medical College Hospital, Puducherry respectively which disclose that the claimant had undergone treatment in the said hospitals as an in-patient for the period from 22.11.2012 to 04.12.2012, 07.01.2013 to 04.02.2013, 05.04.2013 to 29.05.2013 and 11.12.2013 to 23.12.2013 for 110 days. As per Ex.P9-discharge summary, it is specifically mentioned that the appellant suffered fracture of middle 1/3 shaft of humerus and fracture of M/3 shaft of both leg. As per Ex.P8-xerox copy of the accident register, the



injuries are grievous and that the claimant had undergone surgery for the fracture of right leg and left arm. The Tribunal has awarded meagre amount of Rs.4,000/- towards attendant charges and amounts awarded by the Tribunal under different heads are meagre and therefore, prayed for enhancement of compensation.

15. Per contra, Mr. K.J.Sivakumar, learned counsel appearing for the respondent/Transport Corporation contended that the appellant has not proved that due to injuries, he is totally immobilized and unable to do any work. The appellant failed to prove that he suffered functional disability. In the absence of any material evidence that he lost his earning power, the percentage method adopted by the Tribunal is proper and the appellant is not entitled for compensation, by applying multiplier method. The appellant has not made out any case for enhancement and prayed for dismissal of the appeal.

16. Heard the learned counsel appearing for the appellant as well as the second respondent/Transport Corporation and perused the materials available on record.

17. In CMA No.1531/2018, from the materials available on record, it is seen that as per Ex.P9-discharge summary, it is specifically mentioned that the appellant suffered fracture of middle 1/3 shaft of humerus and fracture of M/3 shaft of both leg and as per Ex.P8-xerox copy of the accident register, the injuries are grievous and that the claimant had undergone surgery for the fracture of right leg and left arm. On the side of this appellant, the appellant's passport has been filed to prove his avocation in abroad as Brick Kiln Maistry, Sugarcane cutter and House Keeping servant (maid Assistant). But, as rightly pointed out by the Tribunal no documentary evidence was produced to prove the income of the appellant herein. Admittedly, as stated earlier, though passport of the appellant has been filed to show that the appellant was working in Saudi Arabia no document has been produced to prove the earnings of the appellant. The appellant has not even produced his statement of accounts from the bank to prove his income. The Tribunal has rightly observed that disability caused to the claimant is not a total permanent disability that will affect the appellant's earning capacity in entirety and this Court does not find any infirmity in the finding of the Tribunal in adopting the percentage method for calculating loss of earning capacity.



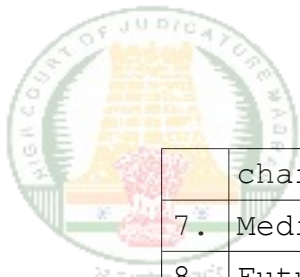
18. The Tribunal has taken Rs.3,000/- per percentage of disability and calculated Rs.99,000/- towards loss of earning capacity due to disability. Considering the year of accident, fixing a sum of Rs.4,000/- per percentage of disability in calculating the loss of earning capacity due to his disability will be reasonable. Thus, the compensation awarded by the Tribunal towards loss of income due to disability is modified to Rs.1,32,000/- (Rs.4,000/- X 33% disability).

19. The Tribunal has taken monthly income of the claimant at Rs.6,500/- which is meager. Considering the year of accident, the monthly income is fixed by this Court at Rs.8,000/- per month. Thus, the compensation awarded by the Tribunal towards loss of income during the treatment period is modified to Rs.32,000/- (Rs.8,000/- X 4 months).

20. Considering the nature of injuries and period of treatment taken by the appellant, the amount awarded by the Tribunal towards Transportation and special diet, pain & sufferings and attendant charges awarded are considered to be low and therefore, they are enhanced to Rs.25,000/-, Rs.25,000/-, Rs.50,000/- and Rs.30,000/- respectively. The amounts awarded by the Tribunal towards loss of amenities, medical expenses and future medical expenses are just and reasonable and hence, the same are confirmed.

21. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity due to disability	99,000/-	1,32,000/-	Enhanced
2.	Transportation	10,000/-	25,000/-	Enhanced
3.	Special Diet	10,000/-	25,000/-	Enhanced
4.	Pain & sufferings	30,000/-	50,000/-	Enhanced
5.	Loss of amenities	25,000/-	25,000/-	Confirmed
6.	Attendant	20,000/-	30,000/-	Enhanced



	charges			
7.	Medical expenses	37,000/-	37,000/-	Confirmed
8.	Future medical expenses	25,000/-	25,000/-	Confirmed
9.	Loss of earning for laid up period	26,000/-	32,000/-	Enhanced
	Total	Rs.2,82,000/-	Rs.3,81,000/-	Enhanced by Rs.99,000/-

22.In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.12,64,000/- and Rs.2,82,000/- are hereby enhanced to Rs.19,08,400/- and Rs.3,81,000/- respectively, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. The respondent-Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

ssi/gbi

To:

1.The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.



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

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+2cc to M/s.Ramya V.Rao, Advocate Sr.10664 and 10668

+2cc ot M/s.K.J.Sivakumar, Advocate Sr.10648 and 10649

C.M.A.Nos.1323 & 1531 of 2018

rp[co]

srg 08/03/2022