



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|--------------------------------|----------------------------------|
| 23.03.2022                     | 30.03.2022                       |

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**CORAM:**

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

**C.M.A(MD)No.15 of 2022**

S.Rajendran

... Appellant/Petitioner.

Vs

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Bye Pass Road,  
Madurai.

... Respondent/Respondent.

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act praying to enhance the compensation awarded in the judgment and Decree dated 28.04.2021 passed in M.C.O.P(MD).NO.23 of 2017 on the file of the Motor Accident Claims Tribunal/Sub Court, Aruppukottai.

For Appellant  
For Respondent

: Mr.I.Suthakaran  
: Mr.K.Muthurakkan  
for Mr.K.Sudalaiyandi

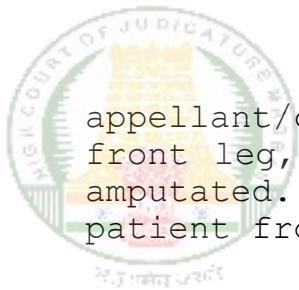
**JUDGMENT**

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The claimant is the appellant herein. This Civil Miscellaneous Appeal is filed by the injured claimant/appellant herein seeking enhancement of compensation.

2. For the sake of convenience, the parties are called as per their ranking in the Tribunal.

3. The appellant/claimant was aged about 35 years on the date of the accident. He was working as a Mason, earning a sum of Rs.24,000/- per month (Rs.800/- Per day). On 19.05.2016, at about 02.00 p.m.,, the appellant/ claimant was riding in his Bajaj Platina two wheeler bearing Registration No.TN-67-AY-7944 in Aruppukottai - Thiruchuli Road. When he came near Government College from west to east by following traffic rules, a Government Bus bearing Registration No.TN-67-N-0506 belonging to respondent was driven by its driver in a rash and negligent manner and dashed against the



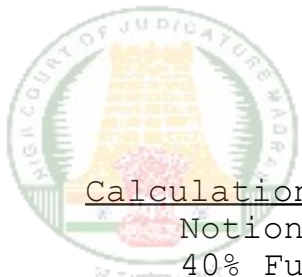
appellant/claimant. Therefore, he sustained injuries on his left front leg, left cheek, left elbow and his right leg below knee was amputated. The appellant was taking treatment in the hospital as in-patient from 19.05.2016 to 30.06.2016 nearly 42 days.

4. The first appellant is examined as P.W.1 and the documents Ex.P1 to Ex.P21 were marked through her. On the side of the respondent, one witness was examined as R.W.1 and no document was marked.

5. The learned Tribunal, after analysing the evidence on record, concluded that the accident occurred due to the rash and negligent driving of the driver of the said bus and awarded a compensation of Rs.13,77,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. The factum of the accident, manner of the accident, rash and negligence fixed on the part of the driver of the first respondent's vehicle are not disputed by both the parties. Considering the nature of the injuries sustained by the appellant/claimant and the oral and documentary evidence adduced on behalf of him and also taking note of the avocation of the injured being Mason, this Court is of the considered view that the essential criteria mentioned by the Honourable Supreme Court in **Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343** is satisfied and the appellant / claimant has lost his left leg below knee and the same affects earning capacity of the appellant / claimant. The proper multiplier method that has been adopted in the instant case is 15 by the Tribunal as per the decision rendered in **Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121**.

7. As per the Ex.C1- Medical report given by the Tamil Nadu Medical Board, the permanent disability was assessed at 60%. To prove the income, the appellant/claimant has not filed any document. Therefore, the Tribunal fixed the notional income at Rs.12,000/- per month. The Tribunal has not added future prospects. Since the age of the appellant / claimant was 35 years on the date of the accident, as per the decision laid down in **National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601**, 40% should be added towards future prospectus of the appellant / claimant. Ex. P2-Treatment Note and Ex.P9 Record Sheet shows that due to amputation of the left leg below knee, artificial knee has been fixed. Accordingly, the loss of earning capacity @ Functional Disability is re-assessed as under:-

Calculation:

Notional income = Rs.12,000/-

40% Future Prospects = Rs.4,800/-

Total = Rs.12,000/- + Rs. 4,800 = Rs.16,800/-

Loss of earning

= Rs. 16,800/- x 12 x 15 x 60 /100

= Rs.18,14,400/-

8. Coming to the non-conventional heads, since the appellant/claimant has suffered below knee amputation, the award under the head 'loss of earning capacity @ Functional Disability' is enhanced to Rs.18,14,400/- as against Rs.12,96,000/- awarded by the Tribunal. The Tribunal has not awarded any amount under the heads 'loss of amenities' and 'attender's charges' and therefore, a sum Rs.5,000/- is awarded towards the same respectively. All other heads awarded by the Tribunal is not disturbed.

9. Accordingly, the award of the Tribunal in M.C.O.P.No.23 of 2017 is modified as follows:

| <b>Sl. No.</b> | <b>Particulars</b>                                       | <b>Amount granted by the Tribunal</b> | <b>Amount granted by this Court</b> |
|----------------|----------------------------------------------------------|---------------------------------------|-------------------------------------|
| 1              | Towards Functional disability @ Loss of Earning Capacity | Rs.12,96,000/-                        | Rs.18,14,400/-                      |
| 2.             | Pain and sufferings                                      | Rs.30,000/-                           | confirmed                           |
| 3.             | Extra nourishment                                        | Rs.10,000 /-                          | confirmed                           |
| 4.             | Transportation                                           | Rs.5000/-                             | confirmed                           |
| 5.             | Loss of income                                           | Rs.36,000/-                           | confirmed                           |
| 6.             | Attender Charges                                         | Nil                                   | 15,000/-                            |
| 7.             | Loss of aminity                                          | Nil                                   | 15,000/-                            |
|                | Total                                                    | Rs.13,77,000/-                        | Rs.19,25,400/-                      |

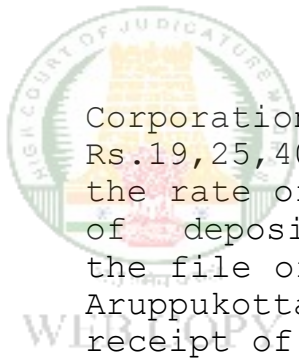
10. The compensation awarded by the Tribunal is enhanced from Rs.13,77,000/- to Rs.19,25,400/- which shall carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs. 13,77,000/- to Rs.19,25,400/-.

(iii) The respondent herein - The Tamil Nadu State Transport



Corporation is directed to deposit the entire compensation of Rs.19,25,400/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till date of deposit to the credit of M.C.O.P.No.23 of 2017, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Aruppukottai, within a period of eight weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount after following the due process of law.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Sub Judge,  
The Motor Accident Claims Tribunal,  
Aruppukottai.

**COPY TO:-**

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

+1 CC to M/s.I.SUTHAKARAN, Advocate ( SR-15403[F] dated 30/03/2022 )

+1 CC to M/s.K.SUDALAIYANDI, Advocate (SR-15573[F] dated 31/03/2022)

**JUDGMENT MADE IN**  
**C.M.A(MD)No.15 of 2022**  
**30.03.2022**

MA (CO)  
GC (02.05.2022) 4P 6C