



CMA(MD).No.28 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.10.2022

Pronounced on : 13.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A. (MD).No.28 of 2022

Arunachalam

...Petitioner

Vs.

1. Tamil Nadu State Transport Corporation Limited,
Through its Managing Director,
Office at No.2, Trivandrum Road,
Vannarapettai, Tirunelveli.

2. Raju

3. Bajaj Allianz General Insurance Company Limited,
Through its Branch Manager,
Office at TC 28/2222(5) "Anugraha",
2nd Floor, M.G.Road, Pazhavangadi,
Trivandrum-695 023.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree made in M.C.O.P.No.835 of 2016, on the file of the Motor Accident Claims



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Tribunal Authority, (Special Sub Court Dealing with MCOP Cases/ Special Sub Judge), Tirunelveli, dated 30-10-2019.

For Appellant : Mr.J.Selva Kumaran
For R1 : Mr.R.Raja Mohan
For R2 : No Appearance
For R3 : Mr. N.Shylappa Kalyan

* * * * *

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in MCOP.No. 835 of 2016, dated 30.10.2019, on the file of the Motor Accident Claims Tribunal, (Special Sub Court Dealing with MCOP Cases/ Special Sub Judge), Tirunelveli.

2.The appellant/claimant, who was awarded with a compensation of Rs.2,12,275/- with interest at 7.5% per annum and costs, for the disability suffered by him, consequent to an accident occurred on 22.08.2015, challenged the quantum of compensation arrived at by the Tribunal and claimed enhancement of the same.



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3.The main contention of the appellant/claimant is that he suffered united fracture in left calcaneum and right foot with implant insitu, compound fracture dislocation of lisfranc joint right foot and comminuted fracture of left calcaneum, that the Medical Officer has fixed the disability at 23.3%, that the claimant was aged 55 years at the time of accident, that he is working as a Conductor in the Government and that he has suffered functional disability.

4.During trial, the claimant has examined himself as PW.1 and two Medical Officers namely, Dr.Ramesh and Dr.Poovalingam as PW.2 and PW.3 respectively and exhibited 13 documents as Ex.P1 to P13. The first respondent/Transport Corporation has examined their Driver namely, Manoharan as RW.1 and adduced no document any evidence. The learned trial Judge upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award, dated 30.10.2019, holding that the first respondent/Transport Corporation is liable and directed them to pay a compensation of Rs. 2,12,275 with interest 7.5% per annum and costs. Aggrieved by the said



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award, the claimant has come forward with the present Appeal.

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5.The points that arise for consideration are:

(i)Whether the Tribunal erred in deciding that the claimant has not suffered functional disability and hence, the multiplier method for determination of compensation cannot be applied?

(ii)Whether the quantum of compensation awarded at by the Tribunal is just and proper and is in accordance with law?

6.The learned Counsel appearing for the appellant would contend that the claimant has suffered crush injury on his right foot, that there were dislocation of joints, that there was a fracture in the calcaneum bone, that he is unable to walk and he is experiencing severe pain while walking, that the medical officer has fixed the disability at 23.3% and that considering the age and avocation of the claimant, the Tribunal ought to have held that the petitioner has suffered functional disability and on that basis, ought to have adopted and applied the multiplier method.

7.Before entering into further discussion, it is necessary to refer the



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judgment of the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajaykumar and another***, reported in ***(2011) 1 Supreme Court Cases 343*** :

“Para 12:

“12. 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 to 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



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his earning capacity.

Para 19:

19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”



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8.Considering the above, the position of law is very clear that in all cases of injury or permanent disablement, the ascertainment of future loss of income or loss of earning capacity is not automatic and that the Tribunal is duty bound to take into consideration the various factors such as nature and extent of disablement, avocation of the injured and the impact of the disability on the avocation and that the multiplier method cannot be applied mechanically.

9.In the case on hand, as already pointed, the appellant has suffered crush injury in the right foot and also bone injury on the left ankle. The medical officer, PW.2, who had treated the claimant in Nagercoil, Thiraviyam Hospital would say that the petitioner has suffered four kind of injuries and out of which, two injuries are grievous in nature.

10.It is evident from the records that the petitioner had fracture, dislocation at tarso-metatarsal level of right foot stabilised by K wire fixation and also had comminuted fracture of left calcaneum and the medical officer, PW.3, who had examined the claimant, has fixed the partial permanent disability with regard to the whole body at 23.3% .



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11.Considering the nature of the disability and his avocation, this Court is of the clear view that this is not a fit case to apply and adopt the multiplier formula to ascertain the compensation. The learned Tribunal has rightly adopted the percentage method and taking note of the fact that the accident had occurred in the year 2015, has rightly awarded Rs.4,000/- for every percentage of disability and awarded Rs.93,200/- towards disability compensation.

12.The learned Counsel appearing for the appellant would submit that the Tribunal has awarded lesser amount under the other heads, that the Tribunal ought to have awarded Rs.70,000/- instead of Rs.20,000/- for pain and suffering, that the Tribunal has awarded only Rs.2,000/- for attendant charges and Rs.5,000/- for transport expenses and Rs.20,000/- towards extra nourishment and that the Tribunal ought to have awarded Rs.15,000/- for attendant charges and Rs.15,000/- for transport expenses and Rs. 50,000/- towards extra nourishment. He would further submit that the Tribunal ought to have granted Rs.75,000/- under the head of loss of amenities instead of Rs.20,000/-.



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13.It is evident from the records that the petitioner had been treated as in-patient in Thiraviam Orthopaedic Hospital, Nagercoil from 23.08.2015 to 26.08.2015 and again from 15.10.2015 to 16.10.2015. Considering the nature of injuries, period of treatment, disability sustained and other attending circumstances, this Court is of the view that the claimant is to be granted Rs.50,000/- for pain and suffering; Rs.10,000/- for transport expenses; Rs.25,000/- for extra nourishment; Rs.15,000/- for attendant charges and Rs.50,000/- for loss of convenience. The Tribunal, as per the medical bills has rightly awarded Rs.52,075/- towards medical expenses. Considering the above, the claimant is entitled to get a total compensation of Rs.2,95,275/-.

14.In the result, this civil miscellaneous appeal is partly allowed and the compensation amount awarded by the Tribunal at Rs.2,12,275/- is enhanced to Rs.2,95,275/- with interest at 7.5% per annum. The first respondent/Transport Corporation is directed to deposit the enhanced award amount, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this order and on such



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deposit, the claimant is permitted to withdraw the award amount with the accrued interest and costs less the amount already withdrawn, if any, on due application before the Tribunal. The parties are directed to bear their own costs.

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Index : Yes / No
Internet : Yes / No
LR

To

1. The Motor Accident Claims Tribunal Authority,
(Special Sub Court Dealing with MCOP Cases/
Special Sub Judge),
Tirunelveli.

2. Tamil Nadu State Transport Corporation Limited,
The Managing Director,
Office at No.2, Trivandrum Road,
Vannarapettai, Tirunelveli.



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K.MURALI SHANKAR, J.

lr

Pre-Delivery Judgment made in
C.M.A. (MD).No.28 of 2022
and
C.M.P(MD)No.7463 of 2019

13.12.2022