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C.M.A. No. 327 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 327 of 2021
and C.M.P. No.3256 of 2021

Selvaraj

... Appellant / Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai,
Chennai - 600002.

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 02.11.2018 passed in M.A.C.T.O.P. No. 7050 of 2015 on the file of the III Judge, Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr. K.V. Muthu Visakan

For Respondent : Mr. M. Murali Vinodh



JUDGMENT

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This Civil Miscellaneous Appeal is filed by the appellant/ claimant for enhancement of compensation awarded in M.A.C.T.O.P. No. 7050 of 2015, dated 02.11.2018 on the file of the III Judge, Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the claimant is that he was a fish cart tricycle driver, who use to transport the fish from market to various places and thereby earning his income. On 07.07.2015, at about 10:00 hours, while he was riding fish cart tricycle at Naryana Guru Salai proceeding west to east direction, came near to Dovoton Bridge, Vepery, at that time, a bus belongs to the Transport Corporation bearing Registration No. TN-01-N-8487 came behind him in high speed and hit on the fish cart, which resulted in causing serious injuries to the claimant. A criminal case was also registered against the driver of the bus of Transport Corporation in Cr.No.282/T3/2015 on the file of the Sub Inspector of Police, D6 Annasquare Traffic Investigation



Police Station. Due to the injuries sustained, the claimant has come forward with a claim petition seeking a compensation for a sum of Rs.30,00,000/- along with interest under section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T. Rules.

4. The Transport Corporation has filed a counter and contended that the driver of the bus has driven the bus in moderate speed by observing the traffic rules and regulations but the claimant came in a rash and negligent manner from Gopal Menon cross lane and hit on the left rear corner of the bus which resulted in causing injuries to him. The accident was occurred only due to the negligent driving of the claimant, hence the Transport Corporation is not liable to pay the compensation. The compensation claimed under various heads is also on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, the claimant himself was examined as P.W.1 and Exs.P.1 to P.10 were marked, on the side of the respondent, R.W.1 was examined and no documents were marked.



6. Based on the evidence placed on record, the Tribunal in point nos. 1 and 2, has held that the driver of the bus is responsible for the accident and the claimant is entitled for compensation to be paid by the Transport Corporation. In point No.3, the Tribunal has quantified and granted compensation for a sum of Rs.12,77,400/- along with interest @ 7.5% per annum from the date of filing of the petition till the date of realization.

7. Aggrieved over the quantum of compensation awarded, more particularly the compensation not awarded for loss of earning capacity, this appeal has been filed by the claimant. The Transport Corporation has not come forward with any appeal against the award of the Tribunal.

8. The learned counsel appearing for the claimant has submitted that the Tribunal has not properly appreciated the evidence of P.W.1 and the disability certificate produced in support of his evidence to prove his loss of earning capacity but the Tribunal wrongly fixed the disability of the claimant as only 50%, which is not proper hence, prays to modify the same and to award just compensation under the head loss of earning capacity. The



claimant have not raised any other grievances regarding the compensation awarded under other heads by the Tribunal.

9. The learned counsel appearing for the Transport Corporation has submitted that the disability of the claimant has not been proved and the claimant has not examined by any doctor and not volunteered himself to appear before the Medical Board, hence the Tribunal based on the evidence placed on record has fixed the disability and also awarded compensation under loss of earning capacity. Hence, there is no infirmity in such fixing of the disability, hence prays to confirm the same.

10. Heard the submissions made on both sides and perused the materials placed on record, I am of the view that the only point to be considered by this Court is whether the Tribunal has rightly considered the disability sustained by the claimant for awarding compensation under the head loss of earning capacity.

11. The Ex.P.2 - discharge summary, which contains the details of the treatment given to the claimant shows that the claimant has undergone



inpatient treatment in the accident ward in Rajiv Gandhi Government General Hospital, Chennai and it is recorded as follows: "C3-C4,C4-C5, C5-C6 Taumatic Disc decease with compressive myelopathy" For which, he underwent a procedure called "Laminectomy & depression". The discharge summary of the Rajiv Gandhi Government General Hospital shows that the claimant was treated as inpatient from 07.07.2015 and discharged on 24.08.2015 and surgery was conducted on 12.08.2015. Subsequently, he has regularly reviewed his health condition in the same Hospital. Thereafter, he also approached the Department of Rehabilitation Medicine, K.K. Nagar, Chennai of disabled and obtained the identity card with pass book issued by the department of Tamil Nadu, wherein it is recorded by the medical board, in serial no.16 of the disability identity card as GIRM, Chennai 83, dated 06.05.2016 and the medical board has also assessed the disability of the claimant as 90%.

12. The Ex.P.9 - disability pass book which shows that the disability certificate issued by the Welfare Board. This certificate speaks for itself to the fact that the claimant has become a differently abled person and he is fit to recieve the Government benefits based on the assessment made by



the medical board and his disability is fixed as 90%. The Tribunal in his award has held that, since no expert evidence produced before the Tribunal regarding the disability of the claimant and other connected conceptual facts, fixed the disability of the claimant as 50%. This Court is of the view that the said finding is not proper since the Tribunal has not gone into the fact that the identity card, pass book with disability certificate was issued by the "Department of Disability" based on the certificate issued by the medical board hence, this Court is of the view that this certificate shall be taken as conclusive proof and does not need examination of expert evidence to substantiate the disability.

13. This Court also finds that, the claimant had appeared before the Tribunal and it has been observed that the claimant could not walk on his own, he came by wheel chair and he could not stand or walk without support of others, this shows that the claimant could not continue his earlier avocation such as riding the fish cart and transportation of goods due to his disability. Hence, the injury sustained by him during the accident has totally restricted him by doing his earlier avocation and more particularly any manual work and in this circumstances, the percentage of disability assessed



by the medical board is fit to be considered as a loss of earning capacity has per the guidelines laid down by the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar*** reported in ***[2011 ACJ 1]***. Accordingly, this Court is inclined to modify the percentage of disability fixed by the Tribunal to 90% for awarding compensation under the head loss of earning capacity.

14. The Tribunal has fixed the notional monthly income as Rs.10,000/- and also awarded 10% future prospectus and adopted multipliers as "13" considering the age of the claimant as 50 years, however, the marked Ex.P.8 - aadhaar card of the claimant shows that he was aged about 60 years at the time of the accident and hence, as per the judgment of the Hon'ble Apex Court judgment in ***Jagdish vs. Mohan and Others [2018 (4) SCC 571]*** and ***Erudhaya Priya vs. State Express Transport Corporation Ltd., [2020 INSC 466 (SC) Website]***, 10% future prospectus is fixed and as per ***Sarla Verma and others Vs. Delhi Transport Corporation and another [2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier adopted is modified to "9" considering the age of the claimant. Accordingly, the loss of earning capacity due to functional disability is re-assessed as follows:



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Income of the claimant	= Rs.10,000/- x 12	= Rs.1,20,000/-
Future Prospectus @ 10%		= Rs.12,000/-
Total Income		= Rs.1,32,000/-
Loss of income @ 90% disability		= Rs. 1,18,800/-
Multiplier adopted		= 9
Total Loss of earning power		= Rs.10,69,200/-

15. The Tribunal has awarded compensation under the head loss of income during the treatment period as Rs.90,000/- (Rs.10,000/- per month x 9 months) considering that the claimant could not have worked for nine months since, he has taken treatment for a long period. The Ex.P.2 - discharge summary of the claimant shows that, originally the claimant was admitted on 07.07.2015 and thereafter discharged on 12.08.2015 and after discharge, he has continuously reviewed his health condition for few days and except the Ex.P.2.- discharge summary, the claimant was not once again re-admitted into the hospital as an in-patient and no other documents available to show that the claimant has undergone treatment for more days than the dates marked in the Ex.P.2. Since this Court has awarded compensation for loss of earning capacity, the compensation awarded under the head loss of income during the treatment period is hereby cancelled. The Tribunal has awarded just compensation under various other heads taking note of the injuries sustained by the claimant, hence this Court is inclined to confirm the same.



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16. Today, along with this appeal an additional document was produced before this Court by the claimant to substantiate the fact that the claimant has sustained disability of 90% issued by the medical authority after assessing the disability of the claimant, marked as Ex.P.9. The claimant also produced the discharge summary of Ayur Kshetra, Institute of Ayurvedic Research Pvt. Ltd., dated 26.11.2020 which shows that the claimant has undergone further treatment for another 37 days and by producing an advance receipt for a sum of Rs.1,65,100/- paid by the claimant but there is no document to substantiate the same, that what kind of treatment he has undergone and also why the claimant was asked to pay Rs.33,000/- per week, that too almost for five weeks continuously. Hence, this Court is of the view that the Tribunal in the award has already granted future medical expenses considering the need of future treatment to the claimant. This Court has also considered the loss of earning capacity based on the Ex.P.2 and Ex.P.9 and awarded compensation under loss of earning capacity by treating the disability of the claimant as 90%. Hence, this Court is not inclined to further award additional compensation under the head future medical expenses.



17. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of earning capacity	8,58,000/-	10,69,200/-	Enhanced
2.	Pain and Suffering	1,00,000/-	1,00,000/-	Confirmed
3.	Extra Nourishment	25,000/-	25,000/-	Confirmed
4.	Transport to Hospital	50,000/-	50,000/-	Confirmed
5.	Damages to Clothes	1,000/-	1,000/-	Confirmed
6.	Attender Charges	28,400/-	28,400/-	Confirmed
7.	Medical Expenses	50,000/-	50,000/-	Confirmed
8.	Future Medical Expenses	25,000/-	25,000/-	Confirmed
9.	Loss of Income during treatment period	90,000/-	---	Rejected
10.	Loss of Amenities	50,000/-	50,000/-	Confirmed
	Total Compensation	12,77,400/-	13,98,600/-	Enhanced

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,77,400/- is hereby enhanced to **Rs.13,98,600/- [Rupees Thirteen Lakh Ninety Eight Thousand and Six Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of realization of compensation amount, excluding the default period, if any. The respondent - Transport Corporation is directed to deposit the amount



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awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.7050 of 2015 on the file of the III Judge, Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. On such deposit, the claimant/ appellant herein is permitted to withdraw the award amount now determined by this Court along with interest and costs. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

10.10.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The III Judge,
Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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