



C.M.A.No.153 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.153 of 2012

S.Jayachandran

... Appellant /Petitioner

vs.

Managing Director,

Tamil Nadu State Transport Corporation Ltd.,

Kancheepuram.

... Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 23.12.2010 made in M.C.O.P.No.37 of 2010 on the file of Motor Accident Claims Tribunal / Kancheepuram (District Court No.II, Kancheepuram).

For Appellant : Mr.N.Veerassamy

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

Not being satisfied by the award passed in M.C.O.P.No.37 of 2010, dated 23.12.2010, on the file of Motor Accident Claims Tribunal / Kancheepuram (District Court No.II, Kancheepuram), the claimant herein has preferred this Civil Miscellaneous Appeal for enhancement of compensation.



C.M.A.No.153 of 2012

2. The claim petition was filed under Section 166 of Motor Vehicles Act, 1988 claiming compensation of Rs.7,00,000/- for the injuries sustained in a road accident that occurred on 12.05.2001.

3. The learned Tribunal after hearing both sides and upon consideration of oral and documentary evidence has passed an award for an amount of Rs.80,000/- with interest at 7.5% per annum from the date of filing of the petition till the date of deposit.

4. The learned counsel appearing for the appellant would strenuously contend that due to the accident the appellant has suffered fracture of right bone arm and fore-arm. PW3-Dr.Mukunth has assessed the disability of the appellant as 50%. It is his argument that no amount was granted for pain and sufferings undergone, for transport expenses and prayed for enhancement.

5. Per contra, the learned counsel appearing for the Respondent/Transport Corporation would argue that considering the oral and documentary evidence, the Tribunal has granted compensation of Rs.80,000/- is a well reasoned order and prayed for dismissal.



C.M.A.No.153 of 2012

6. Heard the arguments of the learned counsels for both sides and perused the entire materials available on record.

7. At trial, on the petitioner's side PW1 to PW3 have been examined and Exs.P1 to P14 have been marked. On the side of the respondent, neither any oral evidence was let in nor any document was marked.

8. It is seen from the medical records namely Exs.P2 and P3, owing to the accident, the appellant sustained fracture of right shaft of compound humerus L/3 and fracture of both bones right fore-arm. External fixation was applied and K wiring was done for both bone fracture. At the relevant point of time, appellant was aged about 27 years. It is the evidence of PW3-Dr.Mukunth that he suffers from malunion and there is a non-union of both bone and eventually appellant would not be in a position to do his usual work as he did before. He has assessed the disability as 50%. The Tribunal has granted Rs.50,000/- for the disability suffered (Rs.1000/- per percentage) and Rs.30,000/- for medical expenses. Time and again the Hon'ble Supreme Court is of the view that because of the injuries, the injured is not in a position to attend his work as he did before and depending upon his avocation or work in order to grant just compensation has opined in ***Mr.R.D.Hattangadi v.M/s.Pest Control (India) Pvt. Ltd.,***



C.M.A.No.153 of 2012

and others reported in **1995 (1) SCC 551** and in **Raj Kumar v. Ajay**

Kumar and Another reported in **(2011) 1 SCC 343**, the Court while granting compensation, may invoke multiplier method. In this case, the appellant was said to be a 27 years old person who was working as a lorry driver. Owing to the accident, he sustained fracture of right arm and also compound fracture of both bones fore-arm. The Doctor has assessed the disability as 50%. PW1 has also in his evidence, has explained his difficulties to do the work after the accident. PW3-Dr.Mukunth has specifically stated that he suffered from malunion in respect of first fracture and non-union in respect of second fracture. If the bone breaks and comes out, it is a compound fracture. Relying upon the above said evidences, certainly appellant may not be in a position to attend to his work as he did before. As a lorry driver, he has exert some pressure while driving heavy vehicle. In the facts and circumstances, based on the aforesaid observations, this Court deems fit to adopt multiplier method. The relevant multiplier is 17. The appellant was said to be a lorry driver in Indane Gas Company and earning a sum of Rs.8,000/- per month. Date of accident is 12.05.2001. This Court deems fit to fix the monthly income of the appellant at Rs.3,000/-. The functional disability of the appellant is taken as 35%. To ascertain the loss of earning power, the following formula emerges:

$$\text{Rs.3,000/-} \times 12 \times 17 \times 35 / 100$$



C.M.A.No.153 of 2012

= Rs.2,14,200/-

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9. Therefore, based on the aforesaid discussion, an amount of Rs.15,000/- is granted for pain and sufferings. For Transport Expenses and for Extra Nourishment an amount of Rs.5,000/- is granted. For loss of amenities an amount of Rs.10,000/- is granted. For Attender Charges Rs.5,000/- is granted. In all other aspects, the award of the Tribunal appears to be reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked and tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Partial Permanent Disability	Rs. 50,000/-	Rs.2,14,200/-	Enhanced
2	For Medical Expenses	Rs. 30,000/-	Rs. 30,000/-	Confirmed
3	For Pain and Sufferings	NIL	Rs. 15,000/-	Granted
4	For Transport Expenses and Extra Nourishment	NIL	Rs. 5,000/-	Granted
5	For Loss of Amenities	NIL	Rs. 10,000/-	Granted
6	For Attender Charges	NIL	Rs. 5,000/-	Granted
	Total	Rs.80,000/-	Rs.2,79,200/-	

10. Thus, the compensation awarded by the Tribunal is enhanced



C.M.A.No.153 of 2012

from **Rs.80,000/-** to **Rs.2,79,200/-** which would carry interest at the rate of 7.5% per annum.

11. In the result,

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

(ii) The Compensation awarded by the Tribunal is enhanced from **Rs.80,000/-** to **Rs.2,79,200/-**.

(iii) The Respondent / Transport Corporation is directed to deposit the enhanced compensation amount i.e., **Rs.2,79,200/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.37 of 2010, on the file of Motor Accident Claims Tribunal / Kancheepuram (District Court No.II, Kancheepuram), 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 at liberty to withdraw the same along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The appellant/claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.



C.M.A.No.153 of 2012

29.08.2023

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Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Kancheepuram (District Court No.II, Kancheepuram).
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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C.M.A.No.153 of 2012

R.KALAIMATHI, J.,

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C.M.A.No.153 of 2012

29.08.2023