



C.M.A.No.3011 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3011 of 2013

The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
Coimbatore Division, Coimbatore.

...Appellant

Vs.

Sekar

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 31.08.2012 made in MCOP.No.1496 of 2010 on the file of the Motor Accident Claims Tribunal, 2nd Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr.M.Arun for
Mr.A.Sundaravathanam

For Respondent : Mr.Ma.Pa.Thangavel

JUDGEMENT

Aggrieved by the Judgement and Decree passed by the Motor Accident Claims Tribunal, 2nd Additional District and Sessions Judge, Coimbatore in MCOP.No.1496 of 2010 dated 31.08.2012, the respondent has come up with this Appeal.



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2. The case of the appellant transport corporation is that, the respondent filed a claim petition claiming a compensation of Rs.20,00,000/- on the ground that, on 17.10.2010 at about 23.45 hours, when the respondent/appellant was travelling in the car bearing Regn.No. TN-76-A-2223 on the Karur Road, the appellant corporation bus bearing Reg.No.TN-38-N-2293, driven by its driver in a rash and negligent manner came in the same direction and hit behind the respondent/claimant, due to which, the respondent suffered grievous injuries all over his body. Thereby, the respondent/claimant filed a claim petition claiming compensation for the injuries suffered by him in the above said accident. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.10,16,700/-. Aggrieved by the said order, the appellant/transport corporation has come up with this appeal.

3. Learned counsel for the appellant submitted that, though the respondent did not adduce any material evidence to establish his monthly income, the tribunal had mechanically fixed the monthly income of the respondent as Rs.8,500/- which is not sustainable and even as per the



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decision rendered by the Hon'ble Apex Court in the case of ***Syed Sadiq and Ors. Vs. Divisional Manager, United India Ins. Company***, the maximum notional income can be fixed only as Rs.6,500/-. Further, at the time of accident, though the respondent was aged about 30 years, the tribunal had taken the multiplier of 18 instead of 17, which is contrary to the ratio laid down by the Hon'ble Apex Court in the case of ***Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors*** and the compensation awarded by the tribunal under the other heads are also on the higher side and the same has to necessarily be interfered with.

4. Learned counsel appearing for the respondent submitted that, the annual income earned by the respondent at the time of accident is about Rs.1,13,000/- and he was involved in the selling of second class Banian rolls and due to the injuries sustained by the respondent at the time of accident, he was not able to perform his avocation which he was carrying on before the accident and due to which, his earning capacity got reduced. Hence, the tribunal, after taking into consideration all the above said facts and after carefully perusing the documents placed before it, passed the impugned award fixing a compensation of Rs.10,16,700/-,



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payable by the appellant/transport corporation to the respondent, which does not warrants interference of this Court. Accordingly, he prayed for dismissal of this appeal.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. The factum and manner of the accident is not disputed by the parties and the injuries sustained by the respondent is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/transport corporation is with regard to the quantum of compensation awarded. It is claimed by the appellant that, without any material evidence, the tribunal had fixed the notional income of the respondent as Rs.8,500/-. A perusal of the claim petition and the impugned award reveals that, the respondent had claimed that he was earning a sum of Rs.1,13,000/ per annum. If a person claims that he is earning a sum of Rs.1,13,000/ per annum, necessarily he has to file appropriate documents with regard to the purchase of the raw materials from the manufacturer or with regard to selling the finished products in



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the open market. In the case on hand, except the oral submission, no other documents were filed by the respondent to establish his income. In the absence of any such proof, the tribunal had mechanically fixed the notion income of the respondent as Rs.8,500/-, which is wholly unsustainable. Hence, this Court, by applying the ratio laid down by the Hon'ble Apex Court in the case of *Syed Sadiq and Ors. Vs. Divisional Manager, United India Ins. Company*, fixes the notional income of the respondent as Rs.6,000/-.

7. Further, it is to be pointed out that the percentage of disability varies from doctor to doctor. Hence, considering the Disability certificate and also taking into account the age of the respondent and the nature of injuries suffered by him and also the fact that the due to the injuries sustained by the respondent in the above said accident, he is unable to continue his avocation, due to which his earning capacity got reduced, this Court fixes the disability sustained by the respondent at the rate of 35%. Therefore, the amount under the head of Loss of earning capacity stands modified to a sum of Rs.4,28,400/- ($\text{Rs.6,000/-} \times 12 \times 17 \times 35\% =$



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Rs.4,28,400/-). Further, the Tribunal has awarded a sum of Rs.20,000/- towards compensation for Loss of Amenities, which requires to be interfered with.

8. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the award of compensation under the said heads.

9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning capacity	8,26,200/-	4,28,400/-
Pain and suffering	40,000/-	40,000/-
Medical expenses	1,20,500/-	1,20,500/-
Transportation charges and Extra nourishment	10,000/-	10,000/-
Loss of amenities	20,000/-	10,000/-
Total	Rs.10,16,700/-	Rs.6,08,900/-

10. Accordingly, the appeal is **partly** allowed in the aforesaid



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terms and the impugned award of the Tribunal is modified reducing the compensation amount from **Rs.10,16,700/-** to **Rs.6,08,900/-**. The appellant/transport corporation is directed to deposit the above said modified award amount as ordered by this Court to the credit of MCOP.No.1496 of 2010 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the respondent through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

04.10.2023

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Index : Yes / No

Speaking order : Yes / No

NCC : Yes / No

To

1.The Motor Accident Claims Tribunal,
2nd Additional District and Sessions Judge,
Coimbatore.



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



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M.DHANDAPANI, J.

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