



C.M.A. No. 1636 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1636 of 2021

Kaliyamoorthy

... Appellant/ Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Salamedu, Villupuram.

... Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 13.03.2020 passed in M.C.O.P. No. 192 of 2019 on the file of the Special Sub Judge, Motor Accident Claims Tribunal (Special Sub Court No.1), Villupuram.

For Appellant : M/s. K. Varadha Kamaraj

For Respondent : M/s. K. J. Sivakumar



C.M.A. No. 1636 of 2021

JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 192 of 2019, dated 13.03.2020 on the file of the Special Sub Judge, Motor Accident Claims Tribunal (Special Sub Court No.1), Villupuram, wherein the Tribunal has granted a compensation for a sum of Rs.4,93,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realisation.

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

3. The case of the claimant is that on 27.03.2017, at Pattanikadai bus stop on Pondy - Villianur Main Road, the claimant fell down from the moving bus bearing Registration No.TN-32-N-3206 belonging to the respondent, when he tried to get into the bus. Due to this, the claimant has sustained grievous injuries and fracture on his right femur, then immediately, he was taken to Mundiambakkam Government Medical College Hospital and thereafter to Chennai Stanley Hospital for further



C.M.A. No. 1636 of 2021

treatment. The cause of the accident is due to the rash and negligent act on the part of the driver of the bus, who suddenly took the bus before the claimant getting into it. A criminal case was also registered against the driver of the bus in Cr.No.90/2017 on the file of the Puducherry Traffic Police Station. Due to the injuries sustained, the claimant has filed this claim petition seeking compensation for a sum of Rs.15,00,000/- under section 166(1) of the Motor Vehicles Act.

4. The respondent has filed a counter and contended that, the occurrence has happened only due to the negligent act on the part of the claimant, since he tried to get into the moving bus. The compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Based on the evidence placed on record, the Tribunal in point No.1, has held that rash and negligent act on the part of the driver of the bus bearing Registration No.TN-32-N-3206 is responsible for the occurrence. In point No.2, the Tribunal has held that the respondent - Transport Corporation is liable to pay the compensation to the claimant. In



C.M.A. No. 1636 of 2021

point No.3, the Tribunal has quantified and granted a sum of Rs.4,93,000/- as compensation along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

6. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation. The respondent has not filed any appeal challenging the award.

7. The learned counsel appearing for the claimant submitted that even though, the medical board assessed the disability of the claimant as 70%, the Tribunal has only fixed 50% as loss of earning capacity and the notional income is fixed on the lower side and prays to award just compensation.

8. The learned counsel appearing for the respondent - Transport Corporation has submitted that the Tribunal after considering the injuries, rightly held that the loss of earning capacity of the claimant is 50%. The Tribunal has also rightly fixed the notional income of the claimant as Rs.5,000/- per month, by considering the age and earlier avocation of the



C.M.A. No. 1636 of 2021

claimant, by following the norms, hence, prays to confirm the award of the Tribunal.

9. I have considered the submissions of both sides and perused the materials placed on record:

10. In this case, the injurer/ claimant was referred to medical examination, by the Medical Board of Villupuram Medical College and Hospital. As per the disability certificate, the injurer has lost its movement in right leg knee and ankle. Even though, the right leg was not amputated, it could not be used effectively as used earlier. The Tribunal has fixed the loss of earning capacity by considering the fact that the claimant was mason by profession and the injuries sustained by him have reduced his earning capacity to the extent of 50% by following the dictum laid in judgment of Hon'ble Apex Court in *Rajkumar vs. Ajaykumar [2011 ACJ (1)]*. The Ex.C.1 – Medical Board opinion shows that the injury sustained by the claimant, has totally restricted the movement of his right leg. Even though, right leg is not amputated, same could not be used effectively and being a manual labourer, the claimant could not continue his earlier avocation. This



C.M.A. No. 1636 of 2021

Court is of the view that the Tribunal has rightly assessed the loss of earning capacity of the claimant would be 50%.

11. The Tribunal has fixed notional income as Rs.5,000/- per month to the claimant, however, the claimant has stated in his petition that he was earning a sum of Rs.10,000/- per month from his earlier avocation. This Court is of the view that the accident was happened in the year 2017 and the age of the claimant is 57 years at the time of accident, fixing Rs.9,000/- per month would be proper. Accordingly, the notional income fixed by the Tribunal is modified to Rs.9,000/- per month.

12. The Tribunal has rightly followed the dictum as laid down in *Erudhaya Priya vs. State Express Transport corporation Ltd., [2020 SSCR 299 : 2020 ACJ 2159]* and fixed 10% as future prospectus and as per *Sarla Verma and others Vs. Delhi Transport Corporation and others* reported in *[2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as '9' by considering the age of the claimant the compensation under loss of earning capacity with modified monthly notional income of Rs.9,000/- is assessed as follows:

Annual income (Rs.9,000/- x 12) = Rs.1,08,000/-



C.M.A. No. 1636 of 2021

Future prospects @ 10%	= Rs.10,800/-
Yearly income of the deceased	= Rs.1,18,800/-
Applicable Multiplier	= 9
Total compensation (Rs.1,18,800/- x 9)	= Rs.10,69,200/-
Disability of 50% (Rs.10,69,200/- x 50%)	= Rs.5,34,600/-

13. The Tribunal has awarded loss of income during treatment period as Rs.60,000/- (5,000/- x 12) by considering the income of the claimant as Rs.5,000/- per month and the same is hereby enhanced to **Rs.1,08,000/-** (Rs.9,000/- x 12). Whereas, the compensation awarded by the Tribunal under other heads are concerned, the claimant have not raised any grievances. This Court is also of the view that the compensation awarded under other heads pain and suffering, damage to dress, transportation expenses, attender charges and extra nourishments by the Tribunal is just and the same are hereby confirmed.

14. 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.	Permanent Disability and Loss of future income	2,97,000/-	5,34,600/-	Enhanced



C.M.A. No. 1636 of 2021

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
2.	Loss of income during treatment period	60,000/-	1,08,000/-	Enhanced
3.	Pain and Suffering	75,000/-	75,000/-	Confirmed
4.	Extra Nourishment	10,000/-	10,000/-	Confirmed
5.	Damage to dress	1,000/-	1,000/-	Confirmed
6.	Transportation expenses	20,000/-	20,000/-	Confirmed
7.	Attender Charges	30,000/-	30,000/-	Confirmed
	Compensation Awarded	4,93,000/-	7,78,600/-	Enhanced

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,93,000/- is hereby enhanced to **Rs.7,78,600/- [Rupees Seven Lakh Seventy 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 deposit, excluding the default period, if any. The Respondent - Transport Corporation is directed to deposit the amount 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.192 of 2019 on the file of the Special Sub Judge,



C.M.A. No. 1636 of 2021

Motor Accident Claims Tribunal (Special Sub Court No.1), Villupuram. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

19.10.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge, (Special Sub Court No.1)
Motor Accident Claims Tribunal,
Villupuram.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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C.M.A. No. 1636 of 2021

K. RAJASEKAR, J.

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C.M.A. No. 1636 of 2021

19.10.2023