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C.M.A.No.2757 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.2757 of 2023

and

C.M.P.No.25436 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation,
Salem-7.

...Appellant

Vs.

Athiyappa Gounder (Died)

1.Rajammal

2.Amaravathi

3.Shanmugham

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree passed in MCOP.No.242 of 2015 passed by the Motor Accident Claims Tribunal cum Principal Subordinate Court, Kallakurichi on 04.08.2022.

For Appellant : Mr.D.Nitin

For Respondents : Ms.Mitra Neshaa
for Ms.V.Srimathi



J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

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The Transport Corporation is on appeal. Challenge is to the award of a sum of Rs.19,78,000/- as compensation for the injuries suffered by the claimant Athiyappa Gounder in a motor accident that took place on 19.01.2015 at about 9.15 p.m.

2. According to the claimant, the accident occurred when he was riding his two-wheeler after finishing his day's work at Shanmugham Medicals, where he was working as Cashier on the extreme left side of the road, the bus bearing Reg.No.TN-30-N-1147 belonging to the appellant Corporation driven by its driver in a rash and negligent manner dashed against him. As a result of the accident, he suffered multiple injuries, which resulted in his loss of speech as well as other locomotor disabilities, resulting in 100% loss of earning capacity. Claiming that he was employed as a Cashier in a Medical Shop and was earning Rs.22,500/- per month, the claimant sought for a compensation of Rs.98,00,000/-.

3. The claim was resisted by the Corporation contending that the



claimant also contributed to the accident because of his own negligence.

The monthly income and the quantum of disability were denied and the claimant was put to strict proof of disability. The quantum of compensation was termed as excessive.

4. Pending claim petition, the claimant died and his legal representatives were brought on record. The son of the first claimant Shanmugham, who figured as 4th claimant was examined as PW1 and five other witnesses were examined including a medical Doctor P.V.Ramesh was examined as PW5. Exs.A1 to A33 were marked. On the side of the respondent one Mohandass, official of the Corporation was examined as RW1 and Ex.X1, the certificate relating to ownership of medical shop and Ex.C1 viz., the disability certificate issued by the Medical Board were also marked.

5. The Tribunal on a consideration of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the bus. On the quantum, the Tribunal dis-believed the claim



that the claimant was earning a sum of Rs.22,500/- per month. Considering the age of the claimant, it took the monthly income at Rs.7,000/- notionally and on the conclusion that the claimant was aged 65 years applied the multiplier '7' and arrived at the total loss of earning power at Rs.5,88,000/-. It also awarded a sum of Rs.25,000/- for pain and suffering. Rs.20,000/- towards attender charges, Rs.10,000/- towards loss of nutrition, Rs.5,000/- towards transportation and Rs.13,29,994/- towards medical expenses as per bills. In all the Tribunal determined the compensation at a sum of Rs.19,77,994/- and rounded it off to Rs.19,78,000/-. Aggrieved the Corporation is on appeal.

6. We have heard Mr.D.Nitin, learned counsel appearing for the appellant and Ms.Mitra Neshaa, learned counsel appearing for the respondents/ legal heirs of the claimant.

7. Mr.D.Nitin, learned counsel appearing for the appellant would vehemently contend that the Tribunal erred in fixing the age at 65 on the basis of the discharge summary and other medical bills. The learned



counsel would point out that even as per Ex.C28, Aadhar Card the claimant was aged about 70 years at the time of the accident. Therefore, the multiplier adopted by the Tribunal should have been '5' and not '7'. The learned counsel would also submit that the Tribunal was justified in disbelieving the claim that he was earning a sum of Rs.22,500/-, since the medical shop in which the claimant was supposed to be working belonged to his daughter-in-law.

8. Contending contra Ms.Mitra Neshaa, learned counsel appearing for the respondents would submit that, no doubt, the Tribunal has fixed the multiplier at '7', but, the multiplicand viz., notional monthly income fixed by the Tribunal is very low and therefore, there is no cause for reducing the compensation. She would also point out that the Tribunal has awarded very meagre sums towards pain and suffering, attender charges as well as transportation. Pointing out that the claimant had undergone treatment at Vijaya Hospital at Chennai and he is a resident of Kallakurichi, which is 250 Kms away from Chennai, she would also point out that the treatment spanned for several months and therefore the claimant would have taken



several trips from Kallakurichi to Chennai. Therefore, according to her the award of a sum of Rs.5,000/- towards transportation is too low.

9. We have considered the submissions of the learned counsel on either side.

10. The adoption of age at 65 years and fixation of multiplier at '7' is inexplicable. The documents that are relied upon by the Tribunal are only medical bills and wound certificate, which may not reflect the correct age because the age as stated by the claimant is recorded by the Doctors. When concrete evidence in the form of Aadhar card is available, the Tribunal was not right in ignoring it and taking into account the irrelevant evidence to fix the age at 65 years. We are unable to approve the action of the Tribunal in fixing the age at 65 years and multiplier at '7'.

11. We go by the Aadhar card and fix the age at 70 years and the multiplier would be '5'. We also do not find any reason to enhance the



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notional income fixed by the Tribunal in view of the fact that the claimant was aged 70 years at the time of the accident. However, we find that the submission of the learned counsel for the claimants regarding compensation awarded under the heads pain and suffering, attender charges and transportation needs to be revised. We therefore fix the compensation for pain and sufferings at Rs.50,000/-, attender charges at Rs.30,000/- and the transportation expenses at Rs.15,000/-. Thus, calculated the total compensation would be as follows:-

For loss of income Rs.7,000/- x 12 x 5	= Rs.4,20,000/-
Pain and sufferings	= Rs.50,000/-
Attender charges in hospital	= Rs.30,000/-
Extra nourishment	= Rs.10,000/-
Transportation	= Rs.15,000/-
Medical expenses as per bills	= Rs.13,29,994/-
Total	= Rs.18,54,994/-
and the same is rounded of to Rs.18,55,000/-	

12. We find that the Tribunal has granted only 7% interest which



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is less than the normal interest awarded. We therefore revise it to 7.5%. The appeal is therefore **partly allowed** with the above modifications. The Corporation is granted twelve (12) weeks time to deposit compensation as awarded by us, less the amount, if any, already deposited. No costs. Consequently, the connected miscellaneous petition is closed. On such deposit the respondents 1 to 3 in the appeal are permitted to withdraw the entire amount awarded.

(R.S.M.,J.) (N.S.,J.)
09.11.2023

dsa
Index :No
Internet :Yes
Neutral Citation :No
Speaking order



To

The Motor Accident Claims Tribunal,
Principal Subordinate Court,
Kallakurichi.

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and
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