



WEB COPY



C.M.A.No.736 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.736 of 2022

Manivannan

...Appellant

Vs.

The Managing Director,
MTC. Pallavan House, Anna Salai,
Chennai-600 002

...Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree passed in M.C.O.P.No.362 of 2007 dated 18.12.2019 on the file of Motor Accidents Claims Tribunal, (II Additional District Judge), Tiruvallur at Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj
For Respondent: Mr.A.Vinothraj

JUDGMENT

This appeal is filed challenging the Award and Decree passed in M.C.O.P.No.362 of 2007 dated 18.12.2019 on the file of Motor Accidents Claims Tribunal, (II Additional District Judge), Tiruvallur at Poonamallee.



C.M.A.No.736 of 2022

2. The claimant has filed the above appeal for enhancement of compensation. On 24.03.2007, while the claimant was travelling in the respondent/Corporation bus and while he was trying to alight the bus, the driver of the bus without stopping the bus in the bus stop applied the brakes suddenly, due to which, the claimant fell down and sustained injuries. The claimant was 19 years of age at the time of accident and was a +2 student. He sustained multiple head injuries and also injury on his right arm. The claimant therefore filed a claim petition claiming a compensation of Rs.20,00,000/-.

3. The respondent/Transport Corporation contested the claim petition by filing detailed counter affidavit, wherein the negligence, quantum and liability were disputed.

4. Before the Claims Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.11 in support of his claim. On the side of the respondent, three witnesses were examined and no document was filed.



C.M.A.No.736 of 2022

5. The Claims Tribunal, on an assessment of entire evidence on record, rendered a finding of negligence against the driver of the Transport Corporation Bus and awarded a sum of Rs.7,18,354/- along with 7.5% interest from the date of petition till the date of realization as compensation. Not satisfied with the award passed by the Claims Tribunal, the claimant has preferred the above appeal.

6. The learned counsel for the claimant submitted that the claimant had suffered head injuries and his right hand was totally affected and he was not able to move his right hand as before and therefore, the Tribunal ought to have adopted the multiplier method. The learned counsel further submitted that, considering nature of injuries, hospitalisation period and the period of treatment as outpatient, the Tribunal ought to have awarded reasonable amounts towards other heads like Transportation, Extra Nurishment, loss of amenities, pain and suffering and loss of marital prospects. The learned counsel therefore submitted that the Award of the Tribunal was unjust and unfair and the same had to be interfered with in the appeal.



7. The learned counsel for the respondent, on the other hand, submitted that the award passed by the Claims Tribunal was just, fair and reasonable and did not call for any interference by this Court.

8. I have heard both the learned counsels and have perused the materials placed on record.

9. It is seen that the claimant had suffered head injury, as also injury on his right arm. It is the case of the claimant that, he was not able to move his right hand and that he could not even hold a pen in his right hand. It is seen that the Government Institute of Rehabilitation Centre, K.K.Nagar, Chennai issued disability certificate viz. Ex.P.7, certifying that the claimant was physically handicapped and therefore, recommended for assistance of a scribe to right examinations. Ex.P.8 photos and C.D were marked in support of the claimant's case that the right hand was rendered totally non-functional.

10. The Claims Tribunal, on the basis of evidence of R.W.2 and R.W.3, assessed the disability for the hand at 70%, but as per WHO guidelines, certified the disability for the hand at 90% and for the whole body at 40%.



The Tribunal, inspite of the above documents, adopted unit method and awarded Rs.1,20,000/- towards permanent disability. By following the Judgment in the case of Master Malligarajum Vs Divi reported in 2013 (13) KLJ 15 the Tribunal awarded consolidated amount of Rs.4,00,000/- towards loss of earnings due to the injuries. I am of the view that the compensation awarded towards loss of earning capacity arising out of the disability, is erroneous.

11. The claimant has lost his right hand and it is seen from the evidence on record that the right hand has become totally non-functional. The claimant was aged 19 years at the time of the accident and was +2 student and I am therefore of the view that this is a fit case for adopting the multiplier method. The disability assessed for the whole body at 40% is taken for functional disability also. The claimant would therefore be entitled to Rs.7,86,240/- $((6500 \times 40 / 100 = 2600) \quad (6500 + 2600 = 9100)$
 $9100 \times 12 \times 18 \times 40 / 100 = 7,86,240/-)$ towards loss of earning capacity.

12. Considering the nature of injuries and the period of hospitalisation, I am of the view that the award under the other heads also needs to be enhanced. It is seen that, due to the total impairment of the right



hand, the marital prospects of the claimant would be definitely affected.

Therefore, the award towards loss of marital prospects is enhanced. As the multiplier method is adopted, no amount can be awarded towards loss of amenities.

13. In the light of above discussions, the award of the Claims Tribunal is modified as follows:

S.N o.	<i>Various Heads</i>	<i>Award by Tribunal (amount in Rs.)</i>	<i>Award by this Court (amount in Rs.)</i>
1.	Hospitalisation (Attender)	16,500/-	16,500/-
2.	Medical Expenses	70,354/-	70,354/-
3.	Transportation	5,000/-	15,000/-
4.	Nourishment food	10,000/-	25,000/-
5.	Miscellaneous expenditure during the period of treatment	16,500/-	Nil
6.	Loss of Earning and other Gains	4,00,000/-	7,86,240/-
7.	Loss of earning during period of treatment	Nil	Nil
8.	General damages	1,20,000/-	Nil
9.	Pain and Suffering	40,000/-	40,000/-
10.	Loss of amenities	10,000/-	Nil
11.	Loss of prospectus of Marriages	10,000/-	50,000/-
12.	Loss of expectation of life	20,000/-	Nil
Total compensation		7,18,354/-	10,03,094/-



C.M.A.No.736 of 2022

In effect, the claimant is entitled to Rs.10,03,094/- rounded off to Rs. 10,03,000/-/- along with 7.5% interest from the date of claim petition till the date of deposit.

14. It is submitted by the learned counsel for the respondent that the compensation awarded by the Tribunal has already been deposited along with accrued interest and costs.

15. The respondent/Transport Corporation, is directed to deposit the balance enhanced amount Rs.2,84,740/- along with 7.5% interest, within a period of eight (8) weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimant shall withdraw the same.

In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

14.06.2022

dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No



WEB COPY



C.M.A.No.736 of 2022

To
The II Additional District Judge, Motor Accidents Claims Tribunal
Tiruvallur.

copy to
The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



C.M.A.No.736 of 2022

N.MALA.J.,

dsn

C.M.A.No.736 of 2022

14.06.2023