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CMA.No.126 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.126 of 2022

Pandian @ Ponnu Pandian

... Appellant

-Vs-

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram), Kancheepuram.

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the Judgment and Decree dated 21.04.2021 in MCOP.No.522 of 2011 on the file of Additional Subordinate Judge, Ponneri.

For Appellant	: Mr.J.Ravikumar
For Respondent	: Mr.S.S.Santhosa Kumar

JUDGMENT

Dissatisfied with the quantum of compensation awarded by the Tribunal for the injuries suffered by the victim of a road accident in MCOP.No.522 of 2011 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Court, Ponneri, the victim/appellant has preferred this



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appeal.

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2.On 24.04.2011, while Pandian was traveling as a pillion rider in a motor cycle bearing Regn.No.TN 20 W 7567, it was hit by a bus bearing Regn.No.TN 21 N 0988 belonging to the State Transport Corporation. In the accident, Pandian suffered fractures to his right tibia and fibula. He was soon removed to Government Stanley Medical College Hospital where his injuries were surgically corrected by open reduction. His trauma is not to end there but, continued at least till 20.05.2019, as per the record. He was hospitalized initially between 04.05.2011 and 12.05.2011 as seen from Ext.P3 and then between 19.11.2013 and 20.12.2013 at the same hospital (Vide Ext.P4) and then, at Vellammal Hospital at Madurai between 02.05.2019 and 20.05.2019 as seen from Ext.P8, discharge certificate. In the last occasion, he was admitted for relieving himself of the pain at the operated site. He approached the Tribunal seeking compensation in MCOP.No.522 of 2011. It may be mentioned that the last two terms when the appellant was admitted in the hospital as mentioned above, was during the pendency of the claim petition.



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3. During trial, the victim came to be examined by the medical board, which certified his disability at 40%. The victim was 23 years old when the accident took place and was a coolie. For awarding compensation under the head partial permanent disability, the Tribunal had awarded Rs.3,500/- for every percentage of disability. However for determining the loss of income, the Tribunal had reckoned Rs.6,000/- as the notional income of the victim. In all, the Tribunal had awarded Rs.2,47,000/- as compensation and the break up is as below;

Sl.No.	Head	Amount awarded by the Tribunal
1.	Loss of income	Rs.18,000/-
2.	For Partial permanent disability	Rs.1,40,000/-
3.	Medical Expenses	Rs.37,000/-
4.	Transportation Charges	R.5,000/-
5.	Extra Nourishment	Rs.3,000/-
6.	Damages to clothing and Articles	Rs.1,000/-
7.	Pain and Sufferings	Rs.20,000/-
8.	Attender Charges	Rs.3,000/-
9.	Loss of Amenities	Rs.20,000/-
	Total	Rs.2,47,000/-

This is now under challenge.



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4.The learned counsel for the appellant submitted that it is an undisputed fact that the appellant was a load man or a coolie. This implies that he has to necessarily carry heavy loads either in his head or in his shoulder or on his back. In all these occasions, the entire weight that he carries will ultimately be transmitted to his pelvic bone and then transmitted to his lower limbs. It is evident from Ext.P8 that the appellant continues to suffer from the pain of his fractured right leg even after 8 years of the accident. Indeed, in Ext.P3, it is even indicated that his mobility is abnormal, in one of the pages, by the Doctors of Rajaji Medical College Hospital, Madurai. In these circumstances, the Tribunal ought not to have treated the permanent disability of the appellant as something that could be compensated on a percentage basis but, should have treated it as a functional disability and should have applied multiplier method for determining the value of his disability.

5.The victim is stated to be an able bodied man, but very unfortunately has suffered substantial loss to his power of earning today. Therefore, this Court considers that Rs.7,500 per month would be a fair and



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reasonable income that he might have earned when the accident took place and given the long medical history that continues till date, this Court considers to treat 40% disability as found by the medical board as 40% functional disability. Now reckoning the monthly notional income of the victim at Rs.7,500/- plus 40% towards future prospects of increased income and applying a multiplier of 18 and reducing the sum arrived to 40%, the value of compensation payable on the head of functional disability of the victim is determined at Rs.9,07,200/-. So far as other pecuniary and non pecuniary heads of compensation are concerned, they are awarded as below;

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	18,000/-	-	-
2.	For partial permanent disability	1,40,000/-	9,07,200/-	Enhanced
3.	Medical Expenses	37,000/-	87,000/-	Enhanced
4.	Transportation	5,000/-	20,000/-	Enhanced



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	Charges			
5.	Extra Nourishment	3,000/-	50,000/-	Enhanced
6.	Damages to clothing and Articles	1,000/-	1,000/-	Confirmed
7.	Pain and sufferings	20,000/-	1,00,000/-	Enhanced
8.	Attender Charges	3,000/-	25,000/-	Enhanced
9.	Loss of Amenities	20,000/-	1,00,000/-	Enhanced
	Grand Total	2,47,000/-	12,90,200/- -	Enhanced by 10,43,200/-

6.In conclusion, this appeal is allowed and the compensation is enhanced from Rs.2,47,000/- to Rs.12,90,200/-, together with interest at 7.5% per annum from the date of petition till the date of deposit.. This Court is informed that the respondent Corporation has already deposited the sum awarded by the Tribunal and it is now required to deposit the differential sum with interest at 7.5% within a period of 12 (twelve) weeks from the date of receipt of a copy of this order. On such deposit, the appellant 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 appellant is directed to pay the necessary Court Fee, if any, on the



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enhanced award amount. No costs.

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To

1.The Additional Subordinate Judge, Ponneri.

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

N.SESHASAYEE, J.,



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