



C.M.A.No.2416 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2416 of 2017
and
Civil Miscellaneous Petition No.19436 of 2005

D.Venkatesan

... Appellant/Petitioner

Vs.

1. V. Srinivasan

2. The United India Insurance Company Ltd.,
Chitoor, Andra Pradesh Divisional Office,
at Ranipet.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.03.2004 made in M.A.C.T.O.P.No.970 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court-II, Ranipet.

For Appellant : Mr. P. Mani

For R1 : Dispensed with

For R2 : Mr. P. Sankaranarayanan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant in M.A.C.T.O.P.No.970 of 2002, for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court-II, Ranipet, dated 05.03.2004, wherein the Motor Accident Claims Tribunal has awarded a sum of Rs.77,000/- as compensation along with simple interest at the rate of 9% from 02.12.1999 till the date of deposit.

2. The parties are referred to hereunder according to litigative status and ranking before the Trial Court.

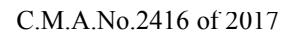
3. The case of the petitioner is that he was working as a temporary driver in Rajiv Gandhi Transport Corporation. He was driving the passenger bus bearing Registration No.TN 07 M 9232 on 08.09.1996 at about 3.45 a.m., while carrying the passengers and proceeded from Chennai-Bangalore, when the bus reached near Konavattam bridge at Bellore, a private bus bearing Registration No.KA 03 A 909 came in the opposite direction rashly and negligent manner, dashed against the front side of the



bus, causing accident and due to the same, the petitioner sustained severe injuries on his head, nose and both arms and the other passengers also sustained injuries. Hence, he filed claim petition, claiming a sum of Rs.2,15,000/- as compensation.

4. The first respondent is the owner of the private bus was remained ex-parte. The second respondent-Insurance Company filed counter contended that the accident was not happened due to the negligent driving of the first respondent's-driver and it was happened only due to the negligent driving of the petitioner and this respondent is not liable to pay the compensation and prayed for dismissal of the Claim Petition.

5. Before the Tribunal, the claimant was examined as P.W.1 and one Doctor, who examined the injured and given Disability Certificate was examined as P.W.2 and Exs.P1 to P6 were marked. On the side of the second respondent, the official of the Insurance Company was examined as R.W.1 and Ex.R1 was marked.



7. Aggrieved over the quantum of compensation and for want of compensation the appellant/claimant has filed this appeal and that the injuries sustained by him is the functional disability, resulted in causing loss of earning capacity and this was not by the Tribunal. He has also submitted that the compensation the Tribunal in other heads are also to be revised. Hence prays multiplier method and to grant enhanced compensation.



8. The learned counsel appearing for the second respondent-

Insurance Company has factually contended that this accident itself was happened in the year 1996 and the claim petition filed in the year 1999 and the Tribunal has awarded just compensation and the injuries sustained by the claimant is not a functional disability and that is only temporary disability hence prays to dismiss the appeal filed by the claimant.

9. This appeal has been numbered almost after 12 years from the date of award and hence, in case, if this Court modifies the award the Insurance Company shall not be made liable to pay the interest.

10. I have considered the contentions made on both sides and perused the entire materials placed on record.

11. The Tribunal has considered the evidence of P.W.2-Doctor, who has given Disability Certificate and after considering the same fixed the disability as 30% of temporary disability and awarded Rs.30,000/- and also awarded Rs.50,000/- as loss of earning power.



12. It is the evidence of the Doctor that he has physically examined the claimant and noted the following injuries and also assessed the disability as follows:

- “(1) Both bones of right leg fractured.
(2) Fracture of the metacarpal bone in the right index finger fractured.”*

13. The evidence of the Doctor shows that the claimant has suffered comminuted fracture on both bones of right leg, which resulted in shortening of his leg by 3 cms. Similarly, the injuries sustained on the right ankle, which also restricted movement of his joint due to which, he has not able to do any work as manual labour and not able to carry heavy objects.

14. In the case of ***Rajkumar vs Ajay kumar and another*** reported in ***2011 (1) SCC 343***, the Hon'ble Apex Court, it has been stated that before applying the disability factor for determination of compensation, the age, avocation of the claimant and circumstances of the case should be considered.



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15. As observed above by the Hon'ble Apex Court, this Court is of the view that the appellant/claimant who is a manual laborer, who suffered the injuries which prevents him from doing earlier avocation and this Court is of the view that, compensation has to be granted by adopting multiplier method. Considering the date of accident, the notional income for the manual labour is fixed as Rs.3,000/- per month. The claimant is also entitled for future prospects as held by the Hon'ble Apex Court in ***Jagdish vs. Mohan and Others*** reported in ***(2018) 4 SCC 571*** and ***Erudhaya Priya vs. State Express Transport Corporation Ltd.***, reported in ***2020 INSC 466 SC Website*** and accordingly 40% is awarded as future prospects.

16. In this case, admittedly, the claimant was a temporary bus driver i.e., heavy vehicle, which requires extra power to operate the bus. The person who has suffered both bone of right leg fracture and also having 3 cms., shortening, he could not drive the bus like he had driven the same prior to the accident. This injury has reduced his power of driving the bus and this Court is of the view that this injury has incapacitated him to drive the heavy vehicle, he has to move on for other avocation, to eak out his



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livelihood accordingly, considering the factors for ascertaining the loss of earning capacity as guided by the Hon'ble Apex Court Judgment, cited supra, I am of the view that the injury caused to him has resulted in loss of earning capacity as 25% and accordingly, the claimant is entitled for compensation by adopting multiplier method, the Tribunal has fixed the monthly income as Rs.4,000/- per month since the accident was occurred in the year 1996, this Court is of the view that fixing notional income Rs.3,000/- would be proper and accordingly, this Court fixed the notional income at Rs.3,000/- per month. Accordingly, loss of earning capacity is assessed as follows: $[3000 \times 12 \times '17' \times 25\%]$ a sum of Rs.1,53,000/- is granted under the head disability and Rs.61,200/- has granted under the head Future prospects as 40% of Rs.1,53,000/-.

17. Since the appeal has been numbered after the delay of 12 years, the claimant shall not entitled to claim interest for the enhanced amount from 28.03.2005 to 04.08.2017. With regard to negligence, the occurrence has taken place in the midnight in the middle of the road, there is no evidence to show the manner, in which the accident had occurred and the evidence of P.W.1 shows that the claimant has also contributed and the



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same has been rightly held by the Tribunal and 30% liability fixed on the claimant and this Court finds no infirmity in the said finding and the same is hereby confirmed.

18. 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	Pain and Sufferings	Rs.25,000/-	---	Rejected
2	Permanent Disability	Rs.30,000/-	---	Rejected
3	Medical Expenses	Rs.3,000/-	Rs.3,000/-	Confirmed
4	Extra Nourishment	Rs.2,000/-	Rs.2,000/-	Confirmed
5	Compensation for loss of earning power	Rs.50,000/-	Rs.1,53,000/-	Enhanced
6	Future Prospects	---	Rs.61,200/-	Granted
	Total	Rs.1,10,000/-	Rs.2,19,200/-	
	(Less) 30% contributory negligence	Rs.33,000/-	Rs.65,760/-	
	Total	Rs.77,000/-	Rs.1,53,440/-	Enhanced by Rs.76,440/-



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19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.77,000/- is hereby enhanced to Rs.1,53,440/- [Rupees One Lakh Fifty Three Thousand Four Hundred and Forty only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the award amount now determined 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.970 of 2002, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court-II, Ranipet. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with proportionate 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 necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall



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stand confirmed. There shall be no order as to costs in the present appeal.

Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Additional District and Sessions Judge,
Fast Track Court-II
Motor Accident Claims Tribunal,
Ranipet.

2.The Section Officer,
VR Section,
High Court,
Madras.



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K.RAJASEKAR,J.

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