



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2023

PRONOUNCED ON : 11.04.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.462 of 2019

C.Ganapathy

... Appellant

vs.

Tamil Nadu State Transport Corporation
Kumbakonam, represented by its
Managing Director

...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal and set aside the judgment and decree dated 12.01.2016 passed in M.C.O.P.No.217 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Kumbakonam.

For Appellant : Mr.A.S.Mathialagan

For Respondent : Mr.D.Sivaraman

JUDGMENT

The appeal has been filed by the claimant seeking enhancement of



the award passed by the Motor Accident Claims Tribunal, Kumbakonam in MCOP.No.217 of 2015.

2.The injured claimant had filed a claim petition contending that he is a Flower Vendor having a monthly income of Rs.15,000/-. He had further contended that the accident had taken place on 18.02.2015. He had sustained fracture in the right hand, left leg and there was an amputation below the thigh of the left leg. He had further contended that there are grievous injuries in the chest portion which had affected his lungs for which he had underwent a surgery. According to him, he had sustained injuries in the left shoulder and in right leg.

3.The claimant had filed Exhibit P2-discharge certificate, Exhibit P3-scan report, Exhibit P4-lab report, Exhibit P13-discharge summary and Exhibit P17- wound certificate. The claimant had examined himself as PW1 and an Ortho Doctor as PW2.

4.The Tribunal had arrived at a finding that the injured claimant had sustained 90% partial permanent disablement based upon Exhibit P17-wound certificate. For the said disability, the Tribunal has taken Rs.2,000/- per percentage and awarded a sum of Rs.1,80,000/- towards permanent disability. The Tribunal had further awarded a sum of Rs.



20,000/- towards pain and suffering; Rs.5,000/- towards attender charges; Rs.15,000/- towards transport expenses and Rs.5,000/- towards extra nourishment and the balance amount on the basis of Exhibits P5 to P8 and Exhibit P12 medical bills. A total compensation of a sum of Rs. 2,63,120/- was awarded. This award is challenged in the present appeal by the claimant seeking enhancement.

5. According to the learned counsel appearing for the appellant/claimant had contended that the appellant's left leg has been amputated from the thigh portion. Therefore, the injured claimant cannot carry on his flower vendor business. He would not be in a position to carry on any different business whatsoever in view of amputation of the left leg. Therefore, 90% of the disability should have been considered by the Tribunal as a functional disability. The learned counsel for the appellant had relied upon the judgment of the Hon'ble Supreme Court in a judgment reported *in 2014 (1) TN MAC 459 (SC) (Syed Sadiq etc., Vs. Divisional Manager, United India Insurance Co., Ltd.)* where the amputation of the right leg and the disability of 65% of a vegetable vendor was considered to be a functional disability and multiplier method was adopted by the Hon'ble Supreme Court.



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6.The learned counsel for the appellant had further contended that being a case of amputation, compensation should have been awarded for fixation of artificial limb. Considering the fact that his left leg has been amputated, an award should have been passed under the head of loss of amenities. The award of the Tribunal for a sum of Rs.20,000/- towards pain and suffering is on the lesser side, considering the nature of disability sustained by the claimant. Hence, he prayed for enhancement of compensation under the different heads.

7.Per contra, the learned counsel appearing for the respondent /Transport Corporation had contended that 90% disability sustained by the claimant cannot be considered to be a functional disability. Even as per the claim petition, he is a Flower Vendor in Uppiliyappan Kovil, Thirunageswaram at Kumbakonam. It is not the case of the claimant that the he is not in a position to carry on the said business or there is any loss of income from the said business. The learned counsel had further contended that the Tribunal was right in not applying multiplier method when there is only a partial permanent disability and not a functional disability. Hence, he prayed for sustaining the award passed by the Tribunal.



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8.I have considered the submissions made on either side and perused the materials available on record.

9.It is not in dispute that the left leg of the claimant has been amputated from the thigh portion due to the injuries sustained by him in the accident. It is also not in dispute that the claimant is a Flower Vendor in a temple. Though it may be true that the Flower Vendor business may not require much movement at the time of selling of flowers and other pooja articles, the flowers have to be procured from the market every day in the morning and evening hours for pooja purpose. Therefore, the Flower Vendor business in a temple could never be considered to be a business which does not require much movement. The fact that his left leg has been amputated would clearly show that the claimant would not be in a position to move as frequently as required for the purpose of doing his business. It has also been brought out by the medical records that his lungs have been damaged in the said accident and he has also underwent a surgery in the lungs. Therefore, the Tribunal was not right in awarding only for permanent disability and not considering it as a functional disability.



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10. The Hon'ble Supreme Court in a judgment reported *in 2014(1) TN MAC 459 (SC) (Syed Sadiq. etc. Vs. Divisional Manager, United India Insurance Co. Ltd.)* has held that the amputation of right leg of a vegetable vendor with 65% disability as a functional disability. The Hon'ble Supreme Court had further held that in a manual labour case, the loss of limb is equivalent to loss of livelihood. The Hon'ble Supreme Court after considering the fact that the claimant would be capable of doing vegetable vending, once he is brought to market place, determined the disability at 85% to determine the loss of income. In the present case, the injured claimant is still capable of doing Flower Vending business, once he reaches the temple premises. Therefore, following judgment of the Hon'ble Supreme Court, this Court is inclined to fix the disability at 90% to determine the loss of income. The age of the claimant at the time of accident was 60 years. Therefore, the correct multiplier is 8. Though the petitioner has claimed his monthly income is Rs.15,000/- per month, no records have been placed before the Court for the same. Hence, the monthly income could be fixed at Rs.9,000/- and applying multiplier of 8. The loss of earning power can be calculated as $\text{Rs.9,000/-} \times 12 \times 8 \times \frac{90}{100} = \text{Rs.7,77,600/-}$. Instead of Rs.20,000/- towards Pain and



suffering, a sum of Rs.50,000/- is awarded. Towards expenses for fixing artificial limb, a sum of Rs.1,00,000/- is awarded. A sum of Rs.15,000/- is awarded towards attender charges. Under the head of transport expenses, a sum of Rs.15,000/- and Extra nourishment, a sum of Rs. 25,000/- are awarded. Under the head of loss of amenities, a sum of Rs. 50,000/- is awarded. For future medical expenses, a sum of Rs.50,000/- is awarded. Totally the award amount is Rs.10,82,600/-

11.The Tribunal has awarded a sum of Rs.2,63,120/- and the said award is enhanced to Rs.10,82,600/-. The enhanced award amount shall carry interest at 7.5% per annum from the date of claim petition. The balance award amount shall be deposited by the Transport Corporation within a period of 12 weeks from the date of receipt of a copy of this judgment. The claimant has to deposit the deficit Court fee before drafting of the decree by this Court. The appeal is partly allowed. No costs.

11.04.2023

Index : Yes/No
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8

R.VIJAYAKUMAR,J.

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Pre-delivery order made in
C.M.A(MD)No.462 of 2019

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