



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.876 of 2022

Balajikumar :Appellant/Petitioner

.VS.

The Tamil Nadu Transport Corporation,
represented through the Managing Director,
having its office at Bye Pass Road,
Collectorate Post,
Dindigul District. :Respondent/ Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the fair and decretal order made in M.A.C.O.P.No.136 of 2018, dated 10.2.2020, on the file of the Motor Accidents Claims Tribunal(Special Subordinate Judge), Dindigul.

For Appellant :Mr.S.Pugalendhi

For Respondent :Mr.K.A.Thirumalaiappan

JUDGMENT

Seeking enhancement of compensation, the present Civil Miscellaneous Appeal has been filed by the appellant/claimant.



WEB COPY

2.The Petitioner/appellant/Claimant was travelling as a pillion rider in a motor cycle bearing Registration No. TN 57 K8338 belonging to one Diwakaran on 22.7.2016, when the motor cycle was proceeding from north to south in the left side of the road, in the curve north to Ambika Cotton Mill 4th Unit, the Government bus bearing Registration No. TN 57 N 1559 came in a rash and negligent manner in left side of the road and dashed against the motor cycle, due to which, the Petitioner sustained fracture in his back hip, grievous injureis in his bladder, spleen, crush injuries in his left hip, penis, fracture in his spinal cord and multiple injuries all over the body. Immediately he was admitted in the Government Head quarters Hospital at Dindigul and thereafter he was shifted to Government Rajaji Hospital, Madurai, for further treatment. He was treated as inpatient there from 22.7.2016 to 1.10.2016 and thereafter from 18.12.2016 to 7.1.2017 and then from 22.1.2017 to 10.2.2017 and thereafter admitted in Rajiv Gandhi Medical College, Chennai and there he was treated as inpatient from 29.4.2017 to 4.5.2015. Even now, the Petitioner is taking treatment as outpatient. Besides during the course of treatment, Spleen Transplanaation operation is also done on his bladder was removed and external urinary bladder was fixed. At the time of accident, the Petitioner was aged 20 years, working in Amibika



WEB COPY

Cotton Mill earning a sum of Rs.15,000/- p.m. Hence a compensation of Rs.50 lakhs was claimed by the injured claimant.

3.It the contention of the respondent-Transport Corporation that the driver of the Transport Corporation bus drove the bus in a cautious manner, however, the driver of the motor cycle drove the vehicle in a zig zag manner and dashed against the bus. The income and other aspects of the injured was not disputed.

4.Before the Tribunal, on the side of the Petitioner/appellant P.W.1 was examined and Ex.P1 to Ex.P10 were marked and the official from the Government Rajaji Hospital, Madurai was examined as P.W.2 and Ex.X1 and Ex.X2 were marked. On the side of the respondent, driver of the transport Corporation bus was examined as R.W.1 and no documents were marked.

5.The Tribunal, after analyzing the evidence of P.W.1 and considering the documents, particularly, the First Information Report filed, fixed the negligence on the part of the driver of the Transport Corporation bus and the Tribunal has fixed the compensation as follows:



1.For future loss of income and disability	- Rs.8,42,400/-
2.Medical Expenses	-Rs.29,743/-
3.For Attendant Charges	- Rs.10,000/-
4.For pain and sufferings	-Rs.40,000/-
5.For loss of personal belongings and	-Rs.3,000/-
6.For transport Expenses	-Rs.3,000/-
7.For Extra nourishment	-Rs.15,000/-
total	-----

-Rs.9,38,143/-

6.The learned counsel for the appellant/claimant submitted that the disability certificate issued by the Medical Officer Ex.P8 clearly show that the petitioner has suffered 60% functional disability and his spinal cord had fractured and grievous injuries in the bladder and he is not able to work besides further the medical records clearly show that he has undergone surgery and his bladder was removed and external urinary bladder was fixed. The notional income of Rs.6500/- was fixed by the Tribunal instead of the salary drawn by the Petitioner. The Tribunal has not added any future prospectus.The learned counsel for the Petitioner/appellant further submitted that the Petitioner being a young adult, has lost his marriage prospectus and that also has not been taken into consideration by the Tribunal.

7.The learned counsel for the respondent Transport



WEB COPY

Corporation would submit that the Tribunal has adopted correct multiplier and fixed the correct notional income and thus the compensation awarded by the Tribunal is just and reasonable.

8. In the light of the above submissions, now the point that arose for consideration in this appeal is as follows:

Whether the compensation awarded by the Tribunal is just and reasonable and whether it needs further enhancement?

9. It is not disputed that the injured is only 20 years at the time of accident and he was working in a Cotton Mill and he was drawing a salary of Rs.7092/- after deductions. The Tribunal has fixed the notional income at Rs.6500/- p.m., and disbelieved the salary certificate issued by the Ambika Cotton Mills and fixed the notional income at Rs.6500/-. It is an admitted fact that the injured is 20 years at the time of accident. Therefore, even if there is no income proof for a young working person like the Petitioner, who is aged 20 years at the time of accident, at the relevant point of time they would have earned minimum of Rs.7500/- p.m.. The Tribunal has not taken the same into account while fixing the notional income. Accordingly, this Court fixed the notional income



WEB COPY

at Rs.7500/-p.m. The nature of the injuries sustained by the Petitioner has been clearly established .Ex.P3 is the discharge summary and Ex.P5 is the scan report and Ex.P8 is the Disability Certificate makes it very clear that the Petitioner has sustained grievous injuries and is totally immobilized and his spinal cord is damaged.Further the Petitioner had sustained extensive pelvic injury with injury in membrane urethra with extravasation of urine. Further it is also noted that the urethroplasty was done on 23.07.2017 with SPC full inside. It is also noted that still the patient has SPC and the disability of the Urological aspect is 60%. It shows that the Petitioner is suffering from disability affecting his day to day works and also permanent one.

10.The Petitioner also appeared before this Court in person and on seeing him, this Court also found that he is not in a position to do any work without the help of others and he is not in a position to move and attend his day to day affairs as before. Further, Spleen Transplantation Operation was done on his bladder and the same was removed and external urinary bladder was fixed. The medical records clearly shows that these injuries are grievous in nature and therefore the disability is arrived at 60% and the prospectus of his marriage is totally ruined. Further the Petitioner



is not in a position to do any other work on his own, as before.

WEB COPY

11. In such view of the matter, this Court is of the view that taking note of the nature of the injuries, fixed the notional income at Rs.7500/-p.m and future prospectus is added at 40% and the total income thus comes to Rs.10,500/- and thus the total loss of income comes to $\text{Rs.}10,500/- \times 18 \times 12 \times 60\% = \text{Rs.}13,60,000/-$. This Court taking note of the injuries, awards a sum of Rs.2 lakhs towards pain and sufferings. Considering the fact that the Petitioner has lost the opportunity of marriage and his marriage prospectus also got totally ruined and also the Petitioner is aged 20 years at the time of accident, awards a sum of Rs.5 lakhs for loss of amenities. Further the award of the Tribunal for medical expenses at Rs.29,743/-, attendant charges at Rs.10,000/-, for loss of personal belongings and clothings at Rs.3000/-, transport expenses at Rs.3000/- and extra nourishment at Rs.15,000/- stands confirmed and all these heads totalling to Rs.50,743/-. Thus the Petitioner is entitled to a sum of $\text{Rs.}13,60,000/- + \text{Rs.}2 \text{ lakhs} + \text{Rs.}5 \text{ lakhs} + \text{Rs.}50,743/- = \text{Rs.}21,10,743/-$ rounded off to Rs.21,11,000/- which is tabulated as follows:



WEB COPY

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of income and disability	Rs.8,42,400	Rs13,60,000/-	modified
2	For medical expenses	Rs. 29,743/-/-	Rs.29,743/-	same
3	For attendant charges	Rs.10,000/-	Rs.10,000/-	same
4.	For pain and sufferings	Rs.20,000/-	Rs. 2,00,000/-	modified
5	For loss of belongings and clothings	Rs.3,000/-	Rs.3,000/-	modified
6	For Transport Expenses	Rs.3,000/-	R3,000/-	Same
7.	For Extra Nourishment	Rs.15,000/-	Rs.15,000/-	Same
8.	For loss of amenities	-----	Rs. 5,00,000/-	Newly awarded
9	Total	Rs. 8,38,143/-	Rs. 21,10,743/- (rounded off to Rs. 21,11,000/-	enhanced

with interest at the rate of 7.5% from the date of claim petition till the date of realisation.

12.In the result, the Civil Miscellaneous Appeal is allowed and the compensation is enhanced from Rs.9,38,143/- to Rs. 21,11,000/- with interest at the rate of 7.5% pa., from the date of claim petition till the date of realisation. The Respondent/Transport



WEB COPY

Corporation is directed to deposit the enhanced award amount with accrued interest and costs to the credit of the claim petition, less the award amount already deposited, if any, within a period of two months from the date of claim petition. On such deposit being made, the appellant/petitioner/claimant is permitted to withdraw the same by filing necessary application before the Tribunal. The appellant/claimant is directed to pay the excess court fee towards the enhanced award amount, as ordered by this Court, before the Registry. Only on such deposit being made, Registry is directed to draft the decree in this appeal. No costs.

21.04.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Motor Accidents Claims Tribunal,
(Special Subordinate Judge),
Dindigul.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.870 of 2022

21.04.2023