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C.M.A.No.401 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.401 of 2022
and
Civil Miscellaneous Petition No.2805 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(TNSTC), Periya Milagu Parai,
Trichy – 620 001.

... Appellant / 2nd Respondent

Vs.

1. Anjalai @ Anjammal

... 1st Respondent/Petitioner

2. K.Subramanian

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 08.02.2021 made in M.C.O.P.No.24 of 2015 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Bhavani.

For Appellant : Mr. M. Murali Vinodh
For Mr. L. Ramanathan

For R1 : Ms. K. Vanishri
For Mr. C. Kulanthaivel

For R2 : Died



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Transport Corporation, challenging the quantum of compensation awarded in M.C.O.P.No.24 of 2015, dated 08.02.2021 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Bavani.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The first respondent filed claim petition seeking compensation for the injuries sustained by her in the road accident, while they were travelling in the appellant's passenger bus from Coimbatore to Kangeyam. She has come forward with the claim petition seeking compensation for sum of Rs.5 lakhs by invoking Section 166 of the Motor Vehicles Act.

4. The claim petition was contested by the Transport Corporation on the ground that the driver of the bus is not responsible for the accident and one lorry was suddenly stopped the road in front of the Transport Corporation Bus, which resulted in causing the accident, hence, the driver of the Transport Corporation Bus is not responsible for the accident and they



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also challenged the quantum of compensation claimed by the claimant under various heads.

5. The Tribunal conducted joint enquiry in the claim petition along with one another claim petition, which was numbered as M.C.O.P.No.201 of 2015 and common award has been passed.

6. The Tribunal after considering the evidence placed on record on the side of the claimant as well as the respondent herein have accepted the case of the claimant that the driver of the Transport Corporation Bus is responsible for the accident and hence, he is also liable to pay the compensation of Rs.9,25,997/- along with interest at the rate of 7.5% per annum to the claimants.

7. Challenging the quantum of compensation this appeal has been filed by the Transport Corporation.

8. Mr. M. Murali Vinodh, learned counsel for Mr. L. Ramanathan, learned counsel for the Transport Corporation, submits that the compensation awarded to the claimant in this claim petition is excessive



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more particularly, while the compensation awarded under the head disability, multiplier method is adopted, which is unwarranted and there is no evidence to show that the claimant has suffered loss of earning capacity hence, prays to modify the same.

9. I have considered the rival submissions made by the learned counsel for the appellant and perused the records available.

10. The claimant namely Anjalai @Anjammal was subjected herself for medical board examination and the medical board has assessed the disability sustained by her as 40% (Permanent). In the Discharge Summary produced by the claimant marked as Ex.A17 shows that she had undergone in-patient treatment from 22.10.2014 to 07.11.2014 and again from 16.06.2015 to 22.06.2016 at Ganga Hospital, Coimbatore. Discharge Summaries marked as Ex.P7 and Ex.P17 reveals that at the time of admission at the Hospital, the following injuries were noted: ***1. Multiple fracture over the left leg tibia and fibula 2. Multiple fracture over the left hand below shoulder and 3. Blood injury over the fact, left foot.*** Subsequently, in X-ray report is has further recorded that ***“X-ray left leg : Non Union of Distal 1/3 of left tibia”.***



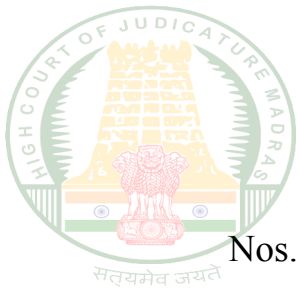
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11. This Discharge summary reveals that the claimant has sustained multiple injuries on the left leg pelvis right foot. The petitioner is a lady aged about 39 years at the time of accident, sustained multiple injuries particularly, in the area of pelvis left leg and also on the loss of tissues on the right foot, has severely diminished and affected her regular activities. Taking note of the same, the medical board has assessed the disability as 40%. The Tribunal considering these injuries and has held that these injuries have drastically reduced the earning capacity of the injured and adopted multiplier method, after fixing the notional income of Rs.8,000/- per month.

12. The respondent/claimant has not filed any appeal challenging the quantum or challenged the compensation awarded under various heads. However, this Court is of the view that, since the quantum of compensation is challenged, the substantial question of law raised in this appeal is whether the compensation awarded by the Tribunal is Just compensation and satisfy the provision of Section 168 of the Motor Vehicles Act, 1988 or not.

13. The Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar & Another [AIR Online 2010 SC 125 : AIR Online 2010 SC 144]*** has given a guidelines as well as illustration for fixing the disability and in Paragraph



Nos.8, 10 and 13, it summarizes the principles to be followed while assessing the disability and granting compensation under the head loss of earning capacity as follows:

“8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in [Arvind Kumar Mishra v. New India Assurance Co.Ltd.](#) - 2010(10) SCALE 298 and [Yadava Kumar v. D.M., National](#)



Insurance Co. Ltd. - 2010 (8) SCALE 567).

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10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on



account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

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13. We may now summaries the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession,



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occupation or job, age, education and other factors.”

14. In this case, admittedly, the claimant was lady aged about 39 years, has suffered multiple fractures more particularly, hip, leg as well as foot in which, she has lost tissues which drastically reduced her mobility, physiq, etc, the Tribunal has rightly treated the disability in to a functional permanent disability resulted in loss of earning capacity and this Court is inclined to confirm the same.

15. On a careful perusal of the award, shows that the injured was claiming herself as a daily wager, working in construction field. This Court is of the view that the same is on the lower side and as per norms followed , the income of the injured is fixed as Rs.10,000/- per month.

16. The Tribunal in the award fixed the age of the claimant based on the Aadhar Card - Ex.P10 as 43 years at the time of accident, the eligible future prospects is 25% and the permanent disability is summarized as follows: $[10000 + 2500 (25\% \text{ of } 10000) 12500 \times 12 \times 14 \times 40\%] =$ Rs.8,40,000/-. Since the compensation under the head loss of earning capacity is awarded, the claimant is not entitled for any compensation under the head loss of earning capacity during treatment period and the same is



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hereby cancelled. As far as other heads are concerned, modify the award since the appeal is challenging the quantum awarded, this Court is entitled to re-consider the quantum of compensation awarded by the Tribunal and re-fixed the eligible compensation in terms of Section 166 of the MV Act, 1988.

17. Thus the compensation awarded 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 granted or reduced
1.	Permanent Disability	Rs.5,37,600/-	Rs.8,40,000/-	Confirmed
2.	Loss of earning capacity	Rs.24,000/-	---	Cancelled
3.	Pain and Sufferings	Rs.20,000/-	Rs.20,000/-	Confirmed
4.	Medical Bills	Rs.3,24,397/-	Rs.3,24,397/-	Confirmed
5	Attender Charges	Rs.3,000/-	Rs.3,000/-	Confirmed
6	Nutrition Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
7	Transport Expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
8	Loss of clothes	Rs.2,000/-	Rs.2,000/-	Confirmed
	Total	Rs.9,25,997/-	Rs.12,04,397/-	Enhanced by Rs.2,78,400/-

18. In the result, this Civil Miscellaneous Appeal is dismissed with modification of the award amount. The compensation awarded by the Tribunal is at Rs.9,25,997/- is hereby enhanced to Rs.12,04,397/- [Rupees Twelve Lakhs Four Thousand Three Hundred and Ninety Seven only]



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together with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit. The 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.24 of 2015, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Bhavani. On such deposit, the claimant 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. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Bhavani.

2.The Section Officer,
VR Section,



High Court,
Madras.

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