



C.M.A.No.772 of 2022

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 22.02.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.772 of 2022

Kalyanakumar

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam Trichy Region, Periyamilaguparai,
Trichy – 1.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 12.04.2019, made in M.C.O.P.No.3104 of 2014, on the file of the Motor Accident Claims Tribunal/Principal Special Judge, Special Court under EC. & NDPS Act.



C.M.A.No.772 of 2022

For Appellant : M/s.R.J.Radhika

Respondent : Mr.M.Murali Vinoth

JUDGEMENT

This instant Appeal is preferred against the award passed by the Motor Accident Claims Tribunal (hereinafter, referred to as the 'Tribunal') in M.C.O.P.No.3104 of 2014, dated 12.04.2019.

2. On 02.06.2024, at about 23.00 hours, a Bus, bearing Regn.No.TN-45-N-3175, belonging to the Transport Corporation, driven by its driver came in a rash and negligent manner and hit against the claimant, who was standing at Puzhal to Tambaram Bypass Road, opposite to Kundrathur Madha College, Chennai, due to which, the claimant sustained both bone fracture at right and left legs and multiple injuries all over the body. Hence, the claimant filed a Petition seeking a sum of Rs.10,00,000/- as compensation.



C.M.A.No.772 of 2022

WEB COPY 3.

The Tribunal, after considering the oral and documentary evidence held that the accident occurred due to the negligent driving of the Bus belonging to the respondent, Transport Corporation and directed the respondent/Transport Corporation to pay the claimant a compensation of Rs.4,85,000/- with interest at 7.5% p.a. from the date of petition till the date of realisation. The break up details of the compensation amount are as follows:-

<i>Sl</i>	<i>Head</i>	<i>Award</i>
1	Loss of Earning	Rs.1,00,000/-
2	Transport to Hospital	Rs. 15,000/-
3	Extra Nourishment	Rs. 15,000/-
4	Dr.Fees and Medical Expenses	Rs. -
5	Loss of Income to the Family members	Rs. 30,000/-
6	Loss of amenities	Rs. 25,000/
7	Compensation for pain and sufferings	Rs. 50,000/-
8	Compensation for continuing of permanent disability	Rs. 1,50,000/-
9	Compensation for the loss of earning power	Rs. 1,00,000/-
	Total	Rs.4,85,000/-



C.M.A.No.772 of 2022

WEB COPY

4. Aggrieved over the award passed by the Tribunal, the appellant/claimant has filed the present appeal seeking for enhancement of compensation.

5. M/s.R.J.Radhika, the learned counsel appearing for the appellant/claimant submitted that at the time of the accident, which occurred on 02.06.2014, the appellant/claimant was aged about 48 years; working as Driver in Airport, in Aero Globe Jet Airways, Chennai and earning a monthly income of Rs.17,000/-, that, due to the accident, he sustained Grade III fracture in both bones of left and right legs and underwent treatment as inpatient for a period of 185 days, during which period, surgeries were also performed; that, due to the such disability, the appellant's left leg shortened by 3 cm, and hence, he cannot continue his avocation as Driver (Airport); that the Medical Board though assessed the disability sustained by the appellant/claimant vide Ex.C.1 at 60%, the Tribunal, while determining compensation towards Disability, restricted the disability at 50% and



C.M.A.No.772 of 2022

determined compensation by adopting percentage method, instead of multiplier method and fixed only a sum of Rs.3,000/- towards per percentage of disability, which resulted in awarding such an inadequate sum of Rs.1,50,000/- under the head ' Permanent Disability'. Therefore, the learned counsel insisted this Court that permanent disability of the injured claimant has to be taken at 100% and compensation under the said head has to be re-determined by adopting multiplier method.

5.1 The learned counsel also fairly admitted that the award of compensation by the Tribunal under the heads are just and fair and therefore, submitted that the same may be confirmed.

6. Per contra, Mr.M.Murali Vinoth, the learned counsel appearing for the respondent/Transport Corporation drawn the attention of this Court to the award passed by the Tribunal under the following four heads

<i>Sl</i>	<i>Head</i>	<i>Award</i>
1	Loss of Income to the Family members	Rs. 30,000/-
2	Compensation for continuing of permanent disability	Rs. 1,50,000/-
3	Compensation for the loss of earning power	Rs. 1,00,000/-



<i>Sl</i>	<i>Head</i>	<i>Award</i>
4	Loss of Earning Power	Rs. 1,00,000/-
	Total	Rs.3,80,000/-

6.1 By referring to the above, the learned counsel would submit that taking into consideration of the disability sustained by the appellant, the Tribunal passed award granting compensation at Rs.3,80,000/- under the aforesaid four heads and the same is sufficient and no interference is called for. However, as regards the applicability of multiplier method is concerned, the learned counsel would submit that in case, the Court is inclined to adopt the multiplier method, then, the monthly income of the appellant/claimant shall be fixed at a sum of Rs.10,000/-.

7. Heard the learned counsel appearing for the appellant/claimant and learned counsel for the respondent/Transport Corporation and perused the materials available on record.

8. Since the present Appeal is filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.



C.M.A.No.772 of 2022

9. It is not in dispute that due to the accident, which occurred on 02.06.2014, the appellant/claimant sustained Grade III fracture in both bones of left and right legs and underwent treatment as inpatient for a period of six months (185 days), during which period, surgeries were performed; that despite the fact that the Medical Board assessed the disability sustained by the appellant/claimant at 60% vide Ex.C.1, the Tribunal, while determining compensation towards Disability, regardless of the aforesaid aspects, restricted the disability at 50% and determined compensation by adopting percentage method, which is not proper. Hence, this Court is setting aside the award passed by the Tribunal with respect to 'Disability' done by way of adopting percentage method and is proceeding to determine compensation towards the said head based on multiplier method.

9.1 Thus, this Court, taking into consideration of the appellant's age (48 years) avocation (Driver in Airport) and year of the accident (2014), is inclined to fix a sum of Rs.12,000/- as monthly income of the injured as the same would be just and reasonable. Insofar as the percentage of disability sustained by the appellant is concerned since according to the



C.M.A.No.772 of 2022

learned counsel for the appellant that owing to the disability sustained at the time of the accident in both bone fracture in both legs, the appellant's left leg got shortened by 3 cm and owing to such disability sustained, the appellant is not in a position to continue his avocation, this Court, so as to find out the veracity of the disability sustained by the appellant, vide order, dated 16.11.2023, referred the appellant before the Medical Board for assessment of percentage of disability, and the Medical Board, after examination has issued a Disability Certificate dated 23.01.2024, assessing the disability at 35%. However, this Court, is of the view that whether the disability sustained by the appellant is 60% or 30%, the fact remains that, due to such disability, now, the appellant has lost his avocation. Therefore, taking into consideration of the same, this Court is inclined to take the disability as has been taken by the Tribunal, i.e. at 50%.

9.2 Thus, by fixing the monthly income of the injured at Rs.12,000/- ; adding 25% towards future prospects; applying right multiplier of '13" (since the injured was aged 48 years) and taking disability at 50%, the compensation towards 'Permanent Disability' is calculated as under:-



C.M.A.No.772 of 2022

Monthly income + 25% future prospects x 13 Multiplier x 12 x 50% Disability

Rs.12,000/- + Rs.3000/- x 13x 12 x 50/100 = Rs.11,70,000/-.

9.3 Therefore, the compensation towards Loss of Earning due to Permanent Disability is awarded at Rs.11,70,000/-. Consequently, award passed by the Tribunal under the three heads, viz., i) Loss of Income to the Family members; iii) Compensation for continuing of permanent disability; iv) Compensation for the loss of earning power totaling to a sum of Rs.2,80,000/- is set aside. However, the compensation awarded by the Tribunal at a sum of Rs.1,00,000/- towards Loss of Earning during treatment period stands confirmed.

9.4 Except the modification made under head, 'Permanent Disability' the award of compensation passed by the Tribunal under other heads remain unaltered as the same appear to be just and reasonable.

10. Thus, the total compensation payable to the appellant/claimant under various Heads is as hereunder:-



C.M.A.No.772 of 2022

WEB COPY

<i>Sl</i>	<i>Head</i>	<i>Award</i>
1	Loss of Earning	Rs.1,00,000/-
2	Transport to Hospital	Rs. 15,000/-
3	Extra Nourishment	Rs. 15,000/-
4	Dr.Fees and Medical Expens/es	Rs. Nil
5	Loss of earning due to Disability	Rs. 11,70,000/-
6	Loss of amenities	Rs. 25,000/-
7	Compensation for pain and sufferings	Rs. 50,000/-
	Total	Rs.13,75,000/-

10.1 Consequently, the total compensation amount of Rs.4,85,000/- awarded by the Tribunal is hereby modified and enhanced to **Rs.13,75,000/-** which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed on the following terms:-



C.M.A.No.772 of 2022

(i) The respondent is directed to deposit the entire amount awarded by this Court equally along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

ii) On such deposit being made by the respondent, the Tribunal shall transfer the amount directly to the claimant's respective bank account through RTGS within a period of three weeks thereon, upon which, the appellant/claimant is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any.

iv) There shall be no order as to costs.

22.02.2024

sd

11/13



C.M.A.No.772 of 2022

To

WEB COPY

The Principal Special Judge,
Special Court under EC. & NDPS Act. ,
Motor Accident Claims Tribunal,



WEB COPY



C.M.A.No.772 of 2022

Krishnan Ramasamy,J.,
sd

C.M.A.No.772 of 2022

22.02.2024