



C.M.A.No.2859 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2859 of 2023

and

C.M.P.No.22811 of 2022

M.Nagaraj

...Appellant

Vs

Tamil Nadu Government Transport Corporation (Salem) Ltd.,
(Regional Office @ Dharmapuri),
By its Managing Director,
No.12, Ramakrishna Road, Salem Town.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation in judgment and decree dated 20.05.2019 in MCOP.No.1337 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Namakkal as prayed for in this appeal with cost.

For Appellant : Mr.R.Nalliyappan
For Respondent : Mr.D.Nitin



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JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 20.05.2019 in MCOP.No.1337 of 2016.

2. The learned counsel for the claimant would submit that on 29.08.2016, when the claimant was riding in his two-wheeler bearing Registration No.TN-29-AL-5647 at Motupatti to Krishnapuram Road, a bus bearing Registration No.TN-29-N-2431, came in a rash and negligent manner and dashed against him, due to which he sustained severe injuries. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
1	Loss of Income	8,000
2	Transportation	5,000
3	Extra Nourishment	15,000
4	Medical Bills	2,69,590
5	Pain and Sufferings	40,000
6	Permanent Disability	1,50,000
	Total	4,87,590



3. Further, he would submit that the accident was occurred in the year

2016 and the claimant had sustained the following injuries:

“Fracture of Tibia below knee in both legs - surgeries conducted, rods and screws fixed – Doctor/PW2, who treated and examined the injured found malunion of both bones, loss of muscles and muscle strength and restriction in movements in both joints.”

4. By referring the above injuries, he would submit that though the claimant had taken treatment for the said injuries, he has been continuously suffering due to the same till date. Further, by referring the discharge summary, he would submit that the claimant was again admitted in the hospital for treatment and discharged on 13.01.2020. While discharging, the Doctor suggested the claimant for amputation at above knee, however, the same was not agreed by the claimant. Therefore, he would contend that due to the accident, since the right leg of the claimant has to be amputated, he is not in a position to go for any work.



5. Further, he would contend that the disability was assessed at 50% by the Medical Board and the Tribunal had awarded the compensation for a sum of Rs.3,000/- per percentage by applying percentage method and the same is too low and hence, he requests this Court to enhance the said compensation by applying multiplier method. That apart, since no amount was awarded towards Future Medical Expenses and Attender's charges, he requests this Court to award the same.

6. In reply, the learned counsel appearing for the respondent would submit that considering all the aspects, the Tribunal had rightly awarded the compensation and hence, he requests this Court to confirm the same.

7. Heard the learned counsel for the appellant and the respondent and also perused the materials available on record.

8. In the present case, the accident was occurred in the year 2016 and the claimant was taken treatment for the fracture of Tibia below knee in both legs and malunion of both bones, loss of muscles and muscle strength and restriction



in movements in both joints and the said injuries continued till 2020, for which he was again admitted in the hospital, wherein he was advised by the Doctor to go for amputation of right leg above knee.

9. Further, it appears that the disability was assessed at 50% and hence, the Tribunal by applying percentage method awarded the compensation of a sum of Rs.3,000/- per percentage. However, considering the nature of injuries sustained by the claimant, this Court is of the view that the Tribunal should have applied the multiplier method for awarding compensation instead of percentage method. Therefore, since no proof for income has been provided by the claimant, considering the year of accident and age of the claimant, this Court is inclined to fix a sum of Rs.11,000/- as notional income of the claimant. Hence, by applying 14 as multiplier and adding 25% towards future prospects and taking 50% as functional disability of the claimant, the loss of income would be calculated as follows:

$$\begin{aligned} & \text{Rs.11,000/- (notional income) + Rs.2,750/- (25\% towards future prospects)} \\ & \quad * 12 \text{ (multiplier)} * 14 \text{ (multiplier)} * 50/100 \text{ (functional disability)} \\ & \quad = \text{Rs.11,55,000/-} \end{aligned}$$

10. Further, since no amount was awarded towards the Future Medical



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Expenses and Attender's Charges, this Court is inclined to award a sum of Rs.50,000/- towards Future Medical Expenses and a sum of Rs.25,000/- towards Attender's Charges. That apart, the Tribunal had awarded the loss of income for 2 months by fixing the notional income as Rs.8,000/- per month. In such case, since this Court fixed the notional income of the claimant as a sum of Rs.11,000/-, the same stands enhanced to a sum of Rs.22,000/-.

11. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Loss of Income	8,000	22,000
2	Transportation	5,000	5,000
3	Extra Nourishment	15,000	15,000
4	Medical Bills	2,69,590	2,69,590
5	Pain and Sufferings	40,000	40,000
6	Permanent Disability	1,50,000	11,55,000
7	Future Medical Expenses	Nil	50,000
8	Attender's Charges	Nil	25,000
	Total	4,87,590	15,81,590



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12. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.15,81,590/-. Accordingly, the award amount stands increased from a sum of Rs.4,87,590/- to Rs.15,81,590/-. In all other aspects, the award of the Tribunal stands confirmed.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the respondent is directed to deposit a sum of Rs.15,81,590 /- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.1337 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Namakkal. Further, it is made clear that as per the order dated 05.12.2022, the respondent shall not pay any interest for the delayed period of 192 days in filing the present appeal. Upon such deposit, the Tribunal is directed to transfer the award amount to bank account of the claimant, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is earlier. No costs.



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Consequently, the connected miscellaneous petition is also closed.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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KRISHNAN RAMASAMY,J.

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