



C.M.A. No. 2588 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2588 of 2021

Arun Pandian

... Appellant / Petitioner

Vs.

The Managing Director,
Karnataka Sate Transport Corporation,
Ramnagar Division,
Archakanahalli, Ramnagar.

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 27.04.2019 passed in M.C.O.P. No.6607 of 2015 on the file of the Special Sub Judge No.I, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Mr. R.J.Radhika
For Respondent : Mr.T.Thiyagarajan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No.6607 of 2015, dated 27.04.2019 on the file of the Motor Accident Claims Tribunal,



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Special Sub Judge No.1, Small Causes Court, Chennai.

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

3. The case of the claimant in brief is that he is a cleaner by profession and that on 24.06.2015, the claimant along with two others have travelled in the goods vehicle bearing Registration No.KA 01 AD 0295 to Bangalore via Tiruvannamalai. Due to some noise came in the engine, the driver stopped the goods vehicle near Vinnavannur Murugan Temple on the left side of the road. The claimant has also placed triangular reflector and also some stones while they were doing repair work. At about 12.40 midnight, a bus bearing Registration No.KA 42 F 1638 belongs to the respondent Corporation came in the same direction and hit on the rear side of the goods vehicle which resulted in causing severe injuries to the claimant. Due to the accident, the claimant has sustained fracture on the left femur and after treatment, he has come forward with the claim petition under Section 166(a) of the Motor Vehicles Act, seeking compensation of



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Rs.20,00,000/-.

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4. The respondent -Transport Corporation has contested the claim and disputed the negligent act alleged against the driver of the bus. They have also disputed the income, age and disability sustained by the claimant and also the compensation claimed under various heads is on the higher side. Hence, prays to dismiss the claim petition.

5. After appreciating the evidences placed on record, the Tribunal has quantified the compensation and awarded a sum of Rs.1,78,750/- as compensation along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, moreso, against the award of compensation under the head disability, the claimant has filed this appeal seeking enhancement of compensation.

7. The learned counsel for the claimant has submitted that the



compensation awarded by the Tribunal under the head disability, without treating the disability as functional disability, which is not proper and being the cleaner, who suffered fracture on the left femur has impacted with the claimant's could not continue his earlier avocation, which resulted in loss of earning capacity. She has also submitted that the compensation awarded under other heads are also on the lower side and prays to modify the same.

8. The learned counsel for the respondent - Transport Corporation has submitted that there was no evidence placed on record to show that the claimant is a cleaner by avocation and except the examination of claimant, no witnesses were examined to substantiate the claim. The Tribunal has rightly awarded just compensation and prays to dismiss the appeal.

9. I have considered the submissions made on both sides and also perused the records.

10. Claimant has given oral evidence stating that he was a cleaner by profession but no evidence placed on record to show that under whom he was working as a cleaner or any other corroborative materials produced his



avocation. He has not even come forward to examine the driver of the goods vehicle with whom he travelled. The claimant has sustained fracture on the left femur and it is subsequently healed and the Kilpauk Medical College Hospital, Chennai, assessed the disability sustained by the claimant as 25%. There is no evidence to show that due to this injury the claimant has lost his capacity to continue his earlier avocation i.e., cleaner. The Tribunal after considering the above fact has held that the claimant has sustained permanent disability which is not a functional disability and this Court finds there is no infirmity in the said finding and accordingly the compensation awarded by the Tribunal under the head disability is proper and the same is hereby confirmed.

11. The Tribunal has also awarded compensation of Rs.20,000/- under the head pain and sufferings and awarded a sum of Rs.5,000/- under the head Transportation charges. This Court is of the view that the compensation awarded under both heads requires modification and accordingly, for the head Pain and Sufferings is modified to Rs.30,000/- and for the head Transportation charges is also modified to Rs.10,000/- However, the Tribunal has awarded a sum of Rs.32,000/- under the head



loss of income during treatment period of four months by fixing notional income of the injured as Rs.8,000/- per month and this Court is of the view that the same is on the lower side and the same is modified to Rs.12,000/- per month and accordingly, under the head loss of earnings is modified to Rs.48,000/- [4x12000]. As far as the compensation awarded by the Tribunal under other heads are concerned, the same are reasonable and the same are hereby confirmed.

12. Accordingly, the Award passed 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 reduced
1.	Disability	Rs.75,000/-	Rs.75,000/-	Confirmed
2.	Pain and sufferings	Rs.20,000/-	Rs.30,000/-	Enhanced
3.	Transportation	Rs.5,000/-	Rs.10,000/-	Enhanced
4.	Extra Nourishment	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Attender Charges	Rs.11,750/-	Rs.11,750/-	Confirmed
6	Loss Earnings	Rs.32,000/-	Rs.48,000/-	Enhanced
7	Loss of Future Prospects	Rs.20,000/-	Rs.20,000/-	Confirmed
	Total Compensation	Rs.1,78,750/-	Rs.2,09,750/-	Enhanced by Rs.31,000/-



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13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,78,750/- is hereby enhanced to Rs.2,09,750/- [Rupees Two Lakhs Nine Thousand Seven Hundred and Fifty only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The respondent – Transport corporation is directed to deposit the amount awarded 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.6607 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge No.1, Small Causes Court, Chennai. On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the appellant/claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to



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costs in the present appeal.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

K. RAJASEKAR, J.

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To:

1. The Special Sub Judge-I,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.

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