



C.M.A.No.2486 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2486 of 2002

K.Ahamed Basha

... Appellant

Vs.

Tamil Nadu State Transport Corporation Ltd.,
Rep. by its Managing Director,
Kancheepuram.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 12.06.2002 made in MACTOP.No.1970 of 1998 on the file of the IV Judge, Motor Accidents Claims Tribunal (Court of Small Causes) Chennai.

For Appellant : Ms.Saleem Fathima

For Respondent : M/s.T.Chandrasekaran

JUDGMENT

Assailing the award passed in MACTOP.No.1970 of 1998 vide judgment dated 12.06.2002 on the file of the IV Judge, Motor Accidents Claims Tribunal (Court of Small Causes) Chennai, the present civil



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miscellaneous appeal has been filed by the appellant / claimant.

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2. The brief facts necessary to dispose of the above appeals are as follows :-

(i) On 08.03.1998 at about 8.00 p.m when the claimant was alighting from the bus bearing Regn.No.0598 belonging to the respondent Corporation, when it stopped at Panagal Maligai Bus Stop at Saidapet, the driver of the bus suddenly took the bus as a result of which the claimant fell down and sustained amputation of right leg below knee. Since the claimant was disabled from doing his work as Driver, he claimed a compensation of Rs.17,00,000/- under various heads.

3. Before the Tribunal, the petitioner examined himself as P.W.1 and Doctor as P.W.2 and marked twenty documents viz., Ex.P1 to Ex.P.20. On the side of the respondents, they examined two witnesses viz., R.W.1 and R.W.2 and marked Ex.R1. After adjudication, the Tribunal awarded a sum of Rs.8,11,200/- as compensation in favour of the claimant.



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4. The learned counsel appearing for the appellant submitted that, as against the award passed in MACTOP.No.1970 of 1998, the appellant and respondent Corporation have filed Civil Miscellaneous appeals before this Court in C.M.A.Nos.2366 and 2486 of 2002 respectively. Aggrieved over the common judgement passed by this Court in the said appeals, the appellant in C.M.A.No.2486 of 2002 has preferred an appeal before the Hon'ble Apex Court in Civil Appeal No.8639 of 2013 arising out of S.L.P.(C).No.6685 of 2007, wherein the Hon'ble Apex Court following the decision of ***K.Suresh Kumar Vs. New India Assurance Company Limited & Anr., reported in 2012 12 SCC 274*** had remanded the matter to this Court for fresh adjudication. Hence, the present appeal has come up for final hearing. Further, he submitted that the appellant was employed as Driver at Kuwait and in order to prove that the appellant was earning a sum of Rs.15,000/- per month, the claimant has marked Ex.P9 passbook of State Bank of India. However, the Tribunal, without adopting any method has mechanically awarded a lumpsum of Rs.5,00,000/- under the head “loss of earning power” which is very meagre. Though the right leg of the claimant was amputated, however, the Doctor P.W.2, has fixed only 80% towards permanent disability



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instead of 100% which is *per se* unsustainable. Though the Tribunal has rightly held that the negligence was on the part of the driver of the respondent's Bus, however, it erred in awarding a sum of Rs.5,000/- towards extra nourishment who had been hospitalized for a long period and the award under the other heads are also on the lower side, which requires interference of this Court. Accordingly, he prayed for passing appropriate orders.

5. The learned counsel appearing for the respondent Corporation submitted that, upon examining the oral and documentary evidence, the Tribunal has rightly awarded a sum of Rs.8,11,200/- payable by the respondent Corporation which is just and reasonable and the same does not require any interference.

6. Heard the learned counsel appearing for the appellant and the learned counsel for the respondent and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the



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parties. Aggrieved over the award passed by the Tribunal, the respondent Corporation and the claimant have filed the respective appeals in respect of the negligence and quantum of compensation before this Court in C.M.A.Nos.2366 and 2486 of 2002, wherein this Court vide common judgment dated 20.12.2007 dismissed the appeal filed by the respondent Corporation and partly allowed the appeal filed by the claimant. Aggrieved over CMA.No.2486 of 2002, the claimant / appellant has preferred an appeal before the Hon'ble Apex Court, wherein, the Hon'ble Apex Court has remanded the matter before this Court for fresh adjudication. Hence, the present appeal has once again come up for adjudication.

8. Admittedly, there is no dispute with regard to the negligence. However, the issue involved in the present appeal is with regard to quantum of compensation awarded by the Tribunal. At the time of accident, the appellant was employed as Driver in Kuwait and in order to prove his employment, Exs.P.6 to P.13 have been marked. Though the appellants claims that he earns a sum of Rs.15,000/- per month, however, no proof has been adduced before the Tribunal with regard to the income



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of the appellant. In the absence of any such proof, the Tribunal has fixed a sum of Rs.15,000/- per month as notional income which is contrary to the decision of the Hon'ble Apex Court. Since the right leg of the claimant was amputated, fixing 80% towards disability cannot be sustained. Hence, this Court is inclined to fix 100% towards disability following the decision of the Hon'ble Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***. It has been the view of the Courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them.

9. The Tribunal has granted compensation under three heads in a sum of Rs.80,000/- towards disability, Rs.5,00,000/- towards loss of earning capacity and Rs.1,00,000/- towards loss of income, however, the injuries suffered by the claimant is permanent injury resulting in amputation for which multiplier method is to be adopted while computing loss of earning capacity. Accordingly, loss of earning capacity is computed under a single head and the other heads viz. Disability and loss of income does not arise. Applying the ratio laid down by the Hon'ble



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Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in *2014 (1) TANMAC 459*, fixing a notional income of Rs.6,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in *2017 (16) Supreme Court Cases 680*, the total income per month is quantified at Rs.8,400/- and the injured being aged about 35 years, as evidenced from the records, adopting the multiplier of 16 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of income to the claimant is arrived at Rs.8400/- * 12 * 16 = Rs.16,12,800/- , which is worked out as follows :-

<i>Loss of earning power</i>	<i>Amount in Rs.</i>
Notional income (Per month)	6,000
Add: Future Prospects (Rs.6,000 x 40%) (Per month)	2,400
	8,400
Notional income (per annum) (Rs.8,400/- x 12)	1,00,800
Multiplier	16
Total	16,12,800

10. A sum of Rs.50,000/- has been awarded under the head “pain and suffering” which is on the higher side and the same is reduced to a sum of Rs.25,000/-. It is seen that the Tribunal has awarded a sum of



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Rs.50,000/- has been awarded under the head “transportation during treatment period” and Rs.2,000/- under the head “transportation”, which is on the higher side and the same is reduced to a sum of Rs.10,000/- under the single head “transportation”. A sum of Rs.24,000/- has been awarded under the head “medical bills” and a sum of Rs.200/- has been awarded under the head “damages to clothes” which does not require any interference. Further, the amount of compensation awarded under the head of extra nourishment is meagre, which is hereby enhanced to a sum of Rs.15,000/-.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning power	5,00,000/-	16,12,800- (enhanced)
Loss of income	1,00,000/-	-
Disability	80,000/-	-
Pain and sufferings	50,000/-	25,000/- (reduced)
Medical Expenditure	24,000/-	24,000/-
Attender charges	-	10,000/- (awarded)



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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Extra Nourishment	5,000/-	15,000/- (enhanced)
Damages to cloths and articles	200/-	200/-
Transportation	2000/-	10,000/- (enhanced)
Transportation during treatment period	50,000/-	-
Total	8,11,200/-	16,97,000/-

12. Accordingly, this appeal is allowed in part and the compensation amount is enhanced from **Rs.8,11,200/-** to **Rs.16,97,000/-** and the respondent / Transport Corporation is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.1970 of 1998 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected



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miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Netruai Citation Case : Yes / No
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To

1. IV Judge, Motor Accidents Claims Tribunal (Court of Small Causes)
Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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