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C.M.A.No.3173 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3173 of 2024
and
C.M.P.No.26296 of 2024

The Managing Director,
M/s.Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Periyamelaguparai, Trichy. ... Appellant

Vs.

Natesh Kumar ... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 05.03.2024 made in M.C.O.P.No.220 of 2021 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.M.Murali Vinodh

For Respondent : Mr.T.Gobinath

JUDGEMENT

Challenging the award passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur in M.C.O.P.No.220 of 2021, dated 05.03.2024 on the grounds of negligence and quantum of



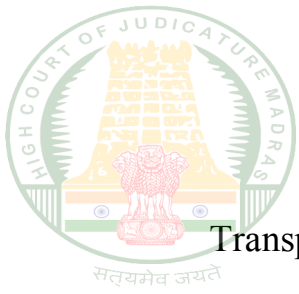
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compensation, the Transport Corporation has filed the appeal.

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2. On 01.02.2021 at about 10.45 a.m., when the respondent/ claimant was riding in a two wheeler bearing Regn.No.PY-01-BW-5457 at Palakkarai, Perambalur from west to east, near Palakkarai Rountana, a bus bearing Regn.No.TN-45-N-3021, belonging to the appellant/Transport Corporation, driven by its driver in a rash and negligent manner and dashed the two wheeler. Due to the accident, the claimant had sustained multiple grievous injuries. Therefore, the claimant had filed a claim petition claiming a sum of Rs.10,00,000/- before the Tribunal in M.C.O.P.No.220 of 2021 for the injuries sustained by him in the said road accident.

3. Before the Tribunal, the claimant had examined himself as P.W.1 and marked 5 documents viz., Ex.P.1 to Ex.P.5. On the side of the respondents, they have examined one witness viz., R.W.1, but, not marked any document. Apart from that, Disability Certificate issued by Medical Board was marked as Ex.C.1. After adjudication, the Tribunal had partly allowed the petition and awarded a sum of Rs.8,56,600/- as compensation in favour of the claimant. Aggrieved by the same, the



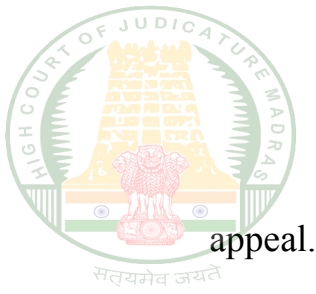
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Transport Corporation had filed the present appeal.

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4. Learned counsel appearing for the appellant/Transport Corporation submitted that, the Tribunal erred in fastening the entire negligence on the part of the driver of the appellant's bus on the ground that the FIR has been registered against the driver of the bus, which is wholly unsustainable and the same requires interference. Further, he submitted that the Tribunal erred in awarding a sum of Rs.5,37,600/- towards loss of income for the injuries sustained by the respondent/claimant by adopting multiplier method, which is wholly unsustainable and the same requires to be re-considered. Accordingly, he prays for allowing the appeal.

5. Per contra, learned counsel appearing for the respondent submitted that, taking into consideration all the relevant documents, the Tribunal had rightly fixed the negligence on the part of the driver of the appellant's bus, which cannot be interfered with. Further, he submitted that, the Tribunal awarded compensation under various heads in favour of the respondent, which is just and reasonable and the same does not require any interference. Accordingly, he prays for dismissal of the



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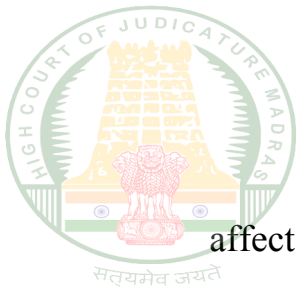
appeal.

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6. Heard the learned counsel appearing for the parties and also perused the materials available on record.

7. The first issue, which arises for consideration in this appeal is with regard to negligence fixed by the Tribunal on the driver of the appellant's bus. This Court is of the view the Tribunal, considering the materials placed before it has rightly come to the conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the appellant's bus and therefore, it is the duty of the appellant/Transport Corporation to compensate the respondent/claimant. Therefore, on that point, no interference is warranted and the finding recorded by the Tribunal is confirmed.

8. The next issue that arises for consideration is with regard to adoption of multiplier method for the disability suffered by the claimant. Ex.C.1 is the disability certificate issued by the medical board, in which, the medical board assessed the disability at 34%. However, the Tribunal on its own held that the injuries suffered by the claimant would definitely



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affect the earning capacity of the claimant and by fixing the percentage of disability at 20%, awarded compensation by awarding multiplier method.

In this regard, it is relevant to extract paragraph No.10 of the judgment passed by the Apex Court in the case of **Raj Kumar Vs. Ajay Kumar & Anr.** reported in **2011 (1) SCC 343 :-**

"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 disability (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



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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."

9. A perusal of the above reveals that, the Tribunal has power to fix functional disability based on the oral evidence placed before it. However, in order to ascertain the functional disability the claimant not his employer, since he was employed as pharmacist. Without examining the employer, the Tribunal had arrived at a conclusion that the claimant had suffered functional disability and adopted multiplier method, which is wholly unsustainable and hence, the same is liable to be interfered with. Hence, this Court is of the opinion that percentage method is to be adopted in this case and not the multiplier method and, therefore, taking a sum of Rs.10,000/- per percentage of disability and fixing the disability sustained by the claimant at 34%, as assessed by the Medical Board, the



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loss of income is reassessed on percentage basis i.e., Rs.10,000/- x 34 =

Rs.3,40,000/- and, accordingly, loss of income is reduced from

Rs.5,37,600/- to a sum of Rs.3,40,000/-.

10. Further, the Tribunal has awarded a sum of Rs.10,000/- transport to hospital; Rs.10,000/- towards extra nourishment; Rs.5,000/- towards attender's charge; Rs.2,16,904/- towards medical bills; Rs.50,000/- towards pain and sufferings, mental agony; Rs.25,000/- towards loss of amenities and Rs.1,000/- towards damage to cloth. This Court is of the view that the compensation awarded by the Tribunal under the heads medical bills and damage to cloth are just and reasonable and the same are confirmed.

11. Further, the compensation awarded by the Tribunal towards transport to hospital, extra nourishment, attender's charge and pain and sufferings, mental agony, which in the opinion of the Court are low and the same are enhanced to Rs.20,000/-, Rs.30,000/-, Rs.20,000/- and Rs.1,00,000/- respectively. There is no basis on which the Tribunal has awarded compensation towards loss of amenities, since the same is not a conventional head and accordingly, the same is set aside.



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S. No.	Description	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of income (Disability)	5,37,600/-	3,40,000/- (reduced)
2	Transport to Hospital	10,000/-	20,000/- (enhanced)
3	Extra nourishment	10,000/-	30,000/- (enhanced)
4	Attender's charge	5,000/-	20,000/- (enhanced)
5	Medical bills	2,16,904/-	2,16,904/-
6	Pain and sufferings, mental agony	50,000/-	1,00,000/- (enhanced)
7	Loss of amenities	25,000/-	-
8	Damage to cloth	1,000/-	1,000/-
	Total	8,55,504/-	7,27,904/-
	Total (Rounded off to)	8,56,000/-	7,28,000/-

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed in the aforesaid terms and the impugned award of the Tribunal is modified, reducing the compensation amount from **Rs.8,56,000/-** to **Rs.7,28,000/-**. The appellant/Transport Corporation is directed to deposit the modified award amount to the credit of M.C.O.P.No.220 of 2021



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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 four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount, directly to the bank account of the respondent/claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

06.12.2024

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

The Motor Accident Claims Tribunal/Chief Judicial Magistrate,
Perambalur.



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M.DHANDAPANI, J.,

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