



C.M.A(MD)No.252 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.07.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.252 of 2018

G.Muruganandam

... Appellant/Petitioner

Vs.

1.The Managing Director,
The Tamil Nadu Transport Corporation Ltd.,
Madurai.

2.The General Manager,
M/s.Fast Track Private Ltd.,
Trustpuram,
Kodampakkam, Chennai-600 024.

3.The Division Manager,
The United India Insurance Company,
No.70, N.S.C.Bose Road, 3rd Floor,
Sowcarpet, Chennai.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the award, dated 10.05.2011 passed by the I Additional District Court cum Motor Accidents Claims Tribunal, Thanjavur in M.C.O.P.No.177 of 2009 so far as it relates to the disability of the appellant and quantum of loss of income and to fix Rs.10,00,000/- towards loss of income in addition to the amount already fixed.



C.M.A(MD)No.252 of 2018

For Appellant : Mr.P.Sesubalan Raja
For R1 : Mr.K.A.Thirumalaiappan
For R2 : Mr.P.Subbaraj
For R3 : Mr.J.S.Murali

JUDGMENT

The present appeal has been filed by the claimant challenging the award in M.C.O.P.No.177 of 2009 on the file of the Motor Accident Claims Tribunal / I Additional District Court (PCR), Thanjavur seeking enhancement of compensation.

2. According to the injured claimant, while he was travelling as a passenger in a taxi, the bus owned by the Transport Corporation had dashed against the taxi and he had sustained grievous injuries. According to the claimant, he is the owner of an electrical spare parts shop and fancy store. He has further contended that he is having a monthly income of Rs.25,000/-. He had prayed for a compensation of Rs.40,00,000/-.

3. The Transport Corporation has filed a counter contending that the entire negligence is on the part of the Driver of the taxi and the



C.M.A(MD)No.252 of 2018

Transport Corporation is not responsible for the accident. They have also questioned the quantum of compensation.

4. The 3rd respondent insurance company had filed a counter contending that the accident has taken place only due to the negligence on the part of the driver of the Transport Corporation and therefore, they are not liable to pay any compensation.

5. The tribunal primarily had relied upon Exhibit A.38 / disability certificate to arrive at a finding that the claimant had suffered 65% of physical disability. However, the tribunal has rejected the request made by the claimant to adopt multiplier method on the ground that the claimant had suffered only partial permanent disability. Challenging this portion of the award, the present appeal has been filed by the claimant.

6. According to the learned counsel appearing for the appellant / claimant, though the physical disability is fixed by the tribunal at 60%, the tribunal has not properly appreciated the functional disability suffered by the claimant. He pointed out though he was the owner of electrical spare parts shop and a fancy store, his work is not confined to



C.M.A(MD)No.252 of 2018

selling the goods. He has to procure the goods from the wholesale markets or from some other locality. Therefore, it requires mobility for the petitioner. According to him, the claimant had sustained grievous injuries in his legs as well as in his hand. Therefore, his mobility has been affected to a larger extent. In such an event, the tribunal ought to have adopted multiplier method on the ground that the claimant had suffered functional disability.

7. Per contra, the learned counsel appearing for the Transport Corporation had vehemently contended that the doctor who has not treated the claimant has issued the disability certificate and he had been examined as Exhibit P.W.3. Therefore, such a certificate is not legally acceptable. He further contended that the tribunal has arrived at a specific finding that the claimant has not suffered any functional disability. The entire disability is only physical disability upon the claimant. He further contended that the claimant is owner of two shops, namely electrical spare parts shop and fancy store. Therefore, his work is restricted within the shop and his earning capacity is not get affected. Only is his earning capacity is affected, the question of applying multiplier method would arise. Hence, he prayed for sustaining the award



C.M.A(MD)No.252 of 2018

passed by the tribunal.

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8. I have carefully considered the submissions made on either side and perused the material records.

9. A perusal of the discharge summary and the disability certificate clearly reveal that the petitioner has suffered grievous fracture injury on his right thigh bone and suffered two fractures in his left palm. Infact, steel wires and plates have been implanted for his fracture in the thigh bone. The records further reveal that there is a grievous injury on the head which has caused some damage to the brain region. The claimant had suffered injuries in his left forearm portions also. Considering the above said facts, the doctor has issued a certificate certifying that the claimant had suffered 70% of partial permanent disability under Exhibit A.38. However, the tribunal has taken the said disablement at 65% in paragraph no.5 of the award. However, the tribunal has refused to accede to the request of the claimant to treat it as a functional disability.

10. The tribunal has held that the injuries suffered by the claimant are only partial permanent disability and there are no records to establish



C.M.A(MD)/No.252 of 2018

that his day-to-day activities would be affected. Based upon that, the tribunal has proceeded to award a sum of Rs.2,000/- per percentage of disability. As narrated supra, the injury suffered by the claimant are grievous in nature. The Hon'ble Supreme Court in a judgment reported in **2014 1 TN MAC 459 (Syed Sadiq Vs. The Divisional Manager, United India Insurance Company)**, in the case of a vegetable vendor, who has sustained 65% of disability, has arrived at a finding that the occupation is not confined to selling vegetables from a particular location. That also involves procuring vegetables either from whole-sale markets or the farmers. The Hon'ble Supreme Court has held that such a vegetable vendor job requires 100% of mobility and has proceeded to determine the functional disability at 35%. The said judgment is squarely applicable to the facts of the present case. The claimant cannot be expected to sit around the spare parts shop or the fancy store to run the shop. He is expected to move around for procuring materials. Therefore, the judgment of the Hon'ble Supreme Court is squarely applicable to the facts of the present case. This Court is inclined to fix the functional disability at 35%.



C.M.A(MD)/No.252 of 2018

11. In view of the above said facts, the award of the tribunal is re-assessed as follows:

Considering the fact that the accident has taken place in the year 2008, the notional monthly income could be fixed at Rs.7,500/- per month.

Loss of income (7500x12x16x35%)	= Rs.5,04,000/-
Physical disability(30x2000)	= Rs. 60,000/-
Pain and suffering	= Rs. 35,000/-
Transport charges	= Rs. 10,000/-
Food and nutrition	= Rs. 15,000/-
Future medical expenses	= Rs. 20,000/-
Medical bills	= Rs.3,65,000/-

Total	=Rs.10,09,000/-

12. The award of the tribunal is enhanced from Rs.6,00,000/- (Rupees Six Lakh only) to Rs.10,09,000/- (Rupees Ten Lakh and Nine Thousand only). The Transport Corporation is directed to deposit the amount along with interest at the rate of 7.5% from the date of filing of the claim petition excluding the period of default, if any. The same shall



C.M.A(MD)No.252 of 2018

be deposited within a period of twelve (12) weeks from the date of receipt of copy of this order. On such deposit, the claimant shall be entitled to withdraw the said amount

13. This Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

02.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The I Additional District Court cum
Motor Accidents Claims Tribunal,
Thanjavur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.252 of 2018

R.VIJAYAKUMAR,J.

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Order made in
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