



C.M.A(MD)No.360 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.07.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

**C.M.A(MD)No.360 of 2021
and
C.M.P(MD)No.2959 of 2021**

The Managing Director,
Tamil Nadu State Transport Corporation
Kumbakonam Ltd.,
Karaikudi.

... Appellant/Respondent

Vs.

Vinothkumar

...Respondent/Claimant

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the impugned award passed in M.C.O.P.No. 138 of 2018 on the file of the MACT (III Additional District & Sessions Court), Thanjavur @ Pattukottai, dated 30.04.2019.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondent : Mr.S.Deenadhayalan



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JUDGMENT

(Judgment of the Court was delivered by **P.VADAMALAI, J.**)

This Civil Miscellaneous Appeal is preferred against the award dated 30.04.2019 passed in M.C.O.P.No.138 of 2018 by the Motor Accidents Claims Tribunal/III Additional District and Sessions Court, Thanjavur @ Pattukottai.

2. The respondent in M.C.O.P.No.138 of 2018 is the appellant herein.

3. The respondent herein is the petitioner/claimant filed the claim petition in M.C.O.P.No.138 of 2018.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 138 of 2018 is adopted hereunder.



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5. The brief facts of the case:

On 11.05.2018 at 7.30 p.m., the petitioner along with his friend Aravind were travelling in TN State Transport Corporation bus bearing registration number TN 63 N 1693 from Ramanathapuram. The petitioner was sitting on the window side at the rear seat opposite to rear entrance. When the bus was plying on ECR road near Big Bridge's northern side to Melasthanam Pillaiyar temple, the driver of the bus TN 63 N 1693 had driven in a rash and negligent manner and dashed against the bus TN 63 N 1228 belonged to Tamil Nadu State Transport Corporation. Due to impact, the petitioner's right hand severed below the elbow. The petitioner was admitted in the Government Hospital, Manamelkudi and thereafter, he took treatment at Thanjavur Medical College Hospital and then Meenakshi Mission Hospital, Thanjavur. The petitioner was a fisherman and was earning Rs.30,000/- p.m. Because of amputation of his right hand, he could not do his avocation. Hence, the petitioner filed the claim petition seeking compensation of Rs.30,00,000/-.



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6. The respondent objected the claim petition by contending that the petitioner was travelling in the bus by protruding his hand outside the bus and so, he invited the injuries to his hand. Due to negligence on the part of the petitioner, he sustained injuries. The driver of the bus is not responsible for the accident. Both the buses belonged to Karaikudi branch.

7. Before the Tribunal both side adduced oral and documentary evidence. On the petitioner's side two witnesses were examined and Ex.P.1 to Ex.P.13 were marked. On the respondent's side R.W.1 was examined and no exhibit was marked.

8. After hearing both and after considering the evidences, the Tribunal has held that the accident took place on the negligence of the driver of the respondent bus. The Tribunal has considered the medical treatment taken by the petitioner and arrived at compensation by applying multiplier method and awarded a total award of Rs.25,03,790/- on various heads. Aggrieved by the said award, the respondent has preferred this Civil Miscellaneous Appeal.



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9. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

10. The learned counsel appearing for the appellant/respondent has mainly argued that the Tribunal has adopted multiplier method for 70% functional disability of the petitioner, whose right hand below the elbow was amputated. Further, the Tribunal fixed the income of the petitioner as Rs.18,750/- p.m. by allowing 25% future prospectus on notional income of Rs.15,000/- p.m. against the settled principle of law. The petitioner has not produced any material to show that he is having a permanent income. The Tribunal has awarded compensation on humanitarian grounds merely on presumption and assumption. Therefore, the compensation awarded by the Tribunal is not sustainable in law. Therefore, this Civil Miscellaneous Appeal may be allowed.

11. Per contra, the learned counsel for the respondent/petitioner/claimant has vehemently contended that the petitioner was aged 38 years at the time of accident. The petitioner is a fisherman. He lost his right hand



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due to the accident. His right hand was amputated and so he lost his future life. The Tribunal has made an elaborate discussion over the evidences adduced by both parties. After considering all aspects, the Tribunal has awarded the just compensation. There is no infirmity in the award. Therefore, the compensation awarded by the Tribunal need not be interfered. The Civil Miscellaneous Appeal may be dismissed.

12. On hearing both and on perusal of records, there is no dispute that the accident took place due to the negligence of the driver of the respondent, who drove the bus TN 63 N 1693, in which, the petitioner was travelling as a passenger. This fact was not disputed and also there is no contra evidence adduced by the respondent/appellant. On perusal of medical records, produced by the petitioner, it is clear that the petitioner's right hand was severed in the accident, he underwent surgery and his right hand was amputated. Further, on perusal of records, the petitioner was assessed by the medical examination and his disability was fixed at 70% as seen from Ex.P.12.



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13. The only contention urged by the appellant/respondent is that the Tribunal fixed notional income and also added future prospects at 25%, moreover, the Tribunal has mechanically awarded compensation on humanitarian grounds. There is no dispute that the petitioner/claimant was a fisherman and his right hand was amputated and in such circumstances, he lost his future life as he could not do his avocation as earlier. The Hon'ble Supreme Court stressed the principle in **Kavita Vs Deepak and Other** reported in **2012 (2) TNMAC 362 (SC)** that

“The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent and degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of



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compensation which should appear to be just, fair and proper.”

It is also observed by this Court in amputation cases that “*The term ‘disability’ as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation.*”

14. Further, the Hon’ble Supreme Court in its verdict reported in **2022 Live Law (SC) 968** has held that the process of determining compensation by the court is essentially a very difficult task and can never be an exact science. Perfect compensation is hardly possible. Moreover, the Hon’ble Supreme Court pointed out in various accidental claim cases that ‘*money cannot renew a physical frame that has been battered.*’ and appreciated the fixation of compensation applying multiplier on notional income.



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15. The Hon'ble Supreme Court in **V.Mekala vs. M.Malathi and Another** reported in **2014 (2) TNMAC 6(SC)**, accepted the assessment of disability at 70% made by the Tribunal and approved the multiplier method adopted by the Tribunal in granting compensation. In fact, the Hon'ble Supreme Court granted a sum of Rs.30,93,000/- as compensation for the accident that took place prior to the year 2013. In this case, the accident took place in the year 2018.

16. Therefore, this Court holds that the Tribunal has not erred in fixing notional income at Rs.15,000/- per month and also added 25% future prospects, considering the fact that the petitioner/claimant was a fisherman and adopted multiplier '15'. There is no dispute in respect of other compensation awarded under other heads. In the above facts and circumstances, the award passed by the Tribunal need not to be interfered and thus this Civil Miscellaneous Appeal fails.



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17. In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 30.04.2019 passed in M.C.O.P.No.138 of 2018 by the Motor Accidents Claims Tribunal/III Additional District and Sessions Court, Thanjavur @ Pattukottai is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.S.,J.)

(P.V.M.,J.)

04.07.2024

NCC : Yes / No

Internet : Yes / No

Index : Yes / No

VSD

To

1.The Motor Accidents Claims Tribunal/
III Additional District and Sessions Court,
Thanjavur @ Pattukottai.

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



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