

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.2.2009

CORAM:-

The Hon'ble Mr. Justice R. SUDHAKAR

C.M.A. No. 2495 of 2003

The Managing Director,  
Tamilnadu State Transport  
Corporation,  
Dharmapuri.

... Appellant/ Respondent

Vs.

Dass

.. Respondent/Claimant

Appeal filed under Section 173 of M.V. Act against the award and decree dated 07.3.2003 made in M.C.O.P. No.198 of 1999 on the file of the Motor Accidents Claims Tribunal, (Additional Sub Judge), Tiruvannamalai.

For Appellant : Mr. P. Jagadeeswaran  
For Respondent : No Appearance

JUDGMENT

Transport Corporation has filed this appeal challenging the award dated 07.3.2003 made in M.C.O.P. No.198 of 1999 on the file of the Motor Accidents Claims Tribunal, (Additional Sub Judge), Tiruvannamalai.

2. It is a case of injury. The accident in this case happened on 12.2.1999 at 5.30 a.m. on the Tiruvannamalai-Chengam high road. The injured claimant Dass was travelling in the appellant transport corporation bus as a passenger. The driver of bus drove the vehicle in a rash and negligent manner and hit an electrical post and in that accident, the claimant suffered injuries. He has taken treatment in Tiruvannamalai Government Hospital. He claimed compensation for the injuries suffered by him.

3. In support of the claim, the injured claimant was examined as P.W.5 along with other injured claimants. Documents Exs. A1 to A20 were marked of which, the relevant documents to the present claimant are Ex.A15, the disability certificate assessing the disability at 30%, Ex.A19, wound certificate, and Ex.A20 medical bills. On behalf of the appellant/ respondent before the Tribunal, one Rajendran was examined as R.W.1. No documentary evidence was let in on behalf of the appellant/ respondent before the Tribunal.

4. The finding of negligence on the part of the driver of the appellant transport corporation bus and the liability of the appellant transport corporation to compensate the claimant is not disputed.

5. The Tribunal in this case, taking note of the age of the injured claimant, who is said to be 33 years and a business man, the disability assessed at 30%, the period of treatment and the grievous nature of injuries all over the body, granted the following amount as compensation with interest at the rate of 9% p.a.

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of earning capacity	Rs. 46,080/-
2	Pain and suffering	Rs. 5,000/-
3	Loss of income during the period of treatment	Rs. 9,600/-
4	Medical expenses	Rs. 7,079/-
	Total	Rs. 67,759/-

6. In appeal, it is contended that the multiplier method adopted for determining the loss of earning capacity is not justified and the amount granted for loss of income during the period of treatment is on the higher side and therefore, the compensation has to be reduced.

7. The learned counsel for the appellant contended that the multiplier method adopted by the Tribunal is not justified. Rightly so because there is no material to support the plea of loss of earning capacity in total so that multiplier can be adopted.

8. A Division Bench of this court in United India Insurance Co. Ltd., - vs. - Veluchamy and another reported in 2005 ACJ 1483, set out the principles as to when multiplier method should be adopted in a case of injury in para 11 which reads as follows:-

"11. The following principles emerge from the above discussion:

(a) In all cases of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988.

(2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."

Tested on this principle, there is no material to support the order of the Tribunal granting compensation based on multiplier method. There is no reason given by the Tribunal for the same.

9. However, this Court is not inclined to reduce the quantum of compensation for the above stated issue for the following reason.

(i) The accident in this case happened in the year 1999. The injured claimant is 33 years old. The disability has been assessed at 30% and therefore, for the disability assessed, the injured claimant will be entitled to adequate compensation. The claimant will be entitled to reasonable compensation for extra nourishment, transport expenses, attender charges for which no amount has been granted. The sum of Rs.5,000/- alone granted for pain and suffering which is also meager.

10. Considering all these aspects, the amount in excess as alleged can be adjusted on the one or other heads which have been omitted by the Tribunal. Therefore, the total compensation granted by the Tribunal does not require any further reduction as also the interest at 9% p.a. as the accident happened in the year 1999 and the award was passed in the year 2003.

11. Finding no merits, the civil miscellaneous appeal is dismissed. No costs. It is seen that entire award amount has already been deposited by the appellant. The claimant is permitted to withdraw the award amount as per the order of the Tribunal.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Motor Accidents Claims Tribunal,  
(Additional Subordinate Judge),  
Tiruvannamalai.

Copy to

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

1 cc To Mr.P.Jagadeeswaran, Advocate, SR.7233.

CMA No. 2495 of 2003

VSV(CO)  
RVL 09.03.2009

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