IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.1.2015

CORAM

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.3680 of 2014
and
M.P.No.1 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
3/137, Salamedu, Vazhudareddi Post,
Villupuram. Appellant/Respondent

vs.

Muthukumaran Respondent/Petitioner

Civil Miscellaneous Appeal against the award dated 19.06.2014 made in M.C.O.P. No.70 of 2010 on the file of Motor Accident Claims Tribunal (Subordinate Judge's Court) Thiruvannamalai.

For appellant : Mr.S.Sairaman

JUDGMENT

Appeal has been preferred by the Transport Corporation against the award of Rs.3,23,993/= for the injuries sustained by the respondent/claimant in the accident occurred on 26.3.2009, when he was riding a two wheeler which was hit by the bus belonging to the appellant Transport Corporation driven rash and negligently. Therefore, the respondent filed claim petition. On contest, the Tribunal found that the bus was driven rash and negligently and award was passed for a sum of Rs.3,23,993/=. The said award has been challenged before this court.

2. Heard Mr.S.Sairaman, learned counsel for the appellant, who would streneously argue that without any calculation, a lumpsum was awarded towards loss of income. Secondly, he would submit that the respondent took treatment in Government Hospital, however, a sum of Rs.1,16,593/= was awarded towards medical expenses and therefore, he seeks to set aside the award passed by the Tribunal.

3. However, a close scrutiny of the award would disclose that the respondent/claimant sustained five fractures viz., two fractures in left hand, one fracture in right thigh bone, fracture in the

shoulder bone and fracture of little finger of the right hand. Even after surgery, the bones got mal-united restricting the movement of the respondent. Based on the evidence of the claimant as well as PW2, the Doctor and examining Exs.P2, P5 and P6, the Tribunal determined the disability at 55%. The said determination of 55% disability cannot be found fault with for the reason stated above.

4. Having determined the disability at 55%, because of the functional disability, the loss of income should have been correctly determined by applying the multiplier method.

5. Though the Tribunal determined a sum of Rs.4500/= as monthly income which is very less as the accident occurred on 26.2.2009 whereas the Honourable Supreme Court in SYED SADIQ v. Divisional Manager, United India Insurance Company Limited (2014(1) TN MAC 451 (SC)), determined a sum of Rs.6500/= as monthly income for a vegetable vendor, who sustained injuries in the accident occurred on 14.2.2008, this court confirms the sum of Rs.4500/= determined by the Tribunal.

6. Having determined the monthly income at Rs.4500/=, the Tribunal ought to have applied appropriate multiplier considering the age of the respondent/claimant. The respondent claimant was aged about 30 years at the time of the accident and the appropriate multiplier to be applied is 17. If the loss of income is calculated in such a way, it would work out to Rs.5,04,900/= (Rs.4500 x 12 x 17 x 55/100) and rounded off to Rs.5,04,000/= which would carry interest at 7.5% per annum from the date of petition till the date of realisation. In view of that a sum of Rs.1,94,400/= is determined as loss of income is set aside and a sum of Rs.5,04,000/= is awarded. A sum of Rs.10,000/= awarded towards pain and suffering, a sum of Rs.2000/= awarded towards transportation and a sum of Rs.1000/= awarded towards damage to articles are confirmed.

7. Though Mr.Sairaman, learned counsel for the appellant would very streneously argue that the respondent took treatment only in Government Hospital and therefore, there could not have been medical expenses to the tune of Rs.1,16,593/=, a perusal of the award would show that the respondent/claimant produced medical bills which have been marked as Ex.P5 to the tune of Rs.1,16,593/=. When the medical bills are before the court, unless the said medical bills are impeached in the cross-examination, the Tribunal cannot ignore that. Therefore, a sum of Rs.1,16,593/= awarded by the Tribunal is sustainable.

8. The award of Rs.3,23,993/= is enhanced to Rs.6,33,593/= rounded off to Rs.6,30,000/= with interest at 7.5% per annum from the date of petition till the date of realisation, in the appeal preferred by the Transport Corporation even in the absence of any

appeal or cross appeal by the respondent/claimant invoking Order XLI Rule 33(1) and section 151 of the Code of Civil Procedure in an attempt to award just and adequate compensation. Moreover, the provisions of the Motor Vehicles Act are beneficiary in nature.

9. Therefore, the appeal fails and the same is dismissed while enhancing the compensation to a sum of Rs.6,30,000/=. The appellant is directed to deposit the entire amount alongwith interest and cost on or before 13th March 2015 failing which the Chairman and Managing Director and Finance Adviser-cum-Chief Accountant of the Transport Corporation shall appear before this court on 16th March 2015. On such deposit, the respondent is permitted to withdraw the entire amount within a period of one week on his deposit of the adequate court fee for the enhanced amount. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To

1. Motor Accident Claims Tribunal
   Subordinate Judge's Court
   Thiruvannamalai

2.Muthukumaran
S/o.Anandan
No.25, Vadivuraja street,
Kosapalayam, Arani Town
Thiruvannamalai District,

Copy to:

The Section Officer, Judl Department
High Court,Madras.

1 cc to Mr.S.Sairaman ,Advocate, SR.No.3601

C.M.A.No.3680 of 2014

tej(co)
pmk.5.2.2015