IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.11.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. NO.1854 OF 2010 & CROSS OBJ.NO.4 OF 2014
& M.P.NO.1 OF 2010

Tamil Nadu State Transport Corporation Ltd.,
Rep.by its Managing Director,
Villupuram Division, Vellore. .. Appellant in C.M.A.No.1854/2010
Respondent in Cross Obj.No.4/2014

Versus

N.Thavamani .. Respondent in C.M.A.No.1854/2010
Cross Objector in Cross Obj.No.4/2014

PRAYER both in C.M.A.No.1854/2010 & Cross Obj.No.4/2014 :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Accident Claims Tribunal,[IV Small Causes Court], Chennai in M.C.O.P.No.5464 of 2001, dated 30.11.2006.

For Appellant in C.M.A.No.1854/2010
For Respondent in Cross Obj.No.4/2014 : No Appearance

For Respondent in C.M.A.No.1854/2010
For Cross Objector in Cross Obj.No.4/2014 : Mr.P.Natarajan

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C O M M O N J U D G M E N T

Aggrieved by the impugned judgment and decree passed by the Motor Accident Claims Tribunal, [IV Small Causes Court], Chennai in M.C.O.P.No.5464 of 2001 dated 30.11.2006, awarding a sum of Rs.3,91,000/- as compensation with interests at the rate of 7.5% from the date of petition, the Manging Director of Tamil Nadu State Transport Corporation, Vellore, has filed the present

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Civil Miscellaneous Appeal. Equally aggrieved by the same judgment, the claimant has also filed Cross Objection seeking enhancement of the compensation on the ground that when she has suffered amputation of her left leg above her knee and also sustained crush injury in her right leg, which are fortified by disability certificate issued by the Doctor showing 80% permanent disability as against the claim of Rs.7,00,000/-, only a sum of Rs.3,91,000/- alone have been awarded.

2.The Civil Miscellaneous Appeal and Cross Objection were listed frequently on 16.11.2015, 17.11.2015 and 18.11.2015. Except the learned counsel appearing for the claimant in Cross Objection, no one appears for the Transport Corporation in all these three days. Finally, when the matter was listed today, except the learned counsel appearing for the claimant in Cross Objection, no one appears for the appellant. Therefore, this Court after waiting more than three hearings, is constrained to proceed with the Cross Objection.

3.Learned counsel appearing for the Cross Objection / claimant would submit that it is an admitted case that on 20.12.2011, at about 6.30 hours, when the claimant was standing on the left side of the Poonamallee High Road at Poonamallee bus stand, the respondent's vehicle bearing registration No.TN-12-N-1269 from bus route No.102B came from west to east direction, namely, proceeding towards Chennai, which was driven by its driver in a rash and negligent manner endangering to the public safety and hit the claimant. In that accident, the claimant sustained grievous injuries and she was admitted in the hospital as inpatient from 20.01.2001 to 14.02.2001. Even after she was discharged from the hospital on 14.02.2001 and again she was taken treatment as outpatient for about 3 to 4 months. When she was discharged from the hospital on 14.02.2001, her left leg above the knee was amputated and her right leg also suffered crush injury. The claimant being a lady, the Doctor also certified the disability certificate that after the accident she cannot even walk without depending upon others help. Therefore, when the Doctor certified 80% permanent disability has further made it clear in the disability certificate marked as Ex.P.5 that the claimant has suffered permanent disability when she was 45. The Tribunal after knowing pretty well that the claimant has completely lost her earning capacity ought to have fixed a meager amount of Rs.3,91,000/-.

4.Adding further the learned counsel appearing for the Cross Objection would submit that the claimant established before the Tribunal she was getting Rs.4,000/- as monthly income by way of selling vegetables, instead of fixing a sum of Rs.4,500/- as notional monthly income as per the ratio laid down by this Court holding that in the absence of any evidence to prove the monthly income of the claimant a sum of Rs.6,500/- should be normally

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taken as notional monthly income, the Tribunal has unreasonably fixed Rs.2,000/-.

5.In this connection, taking support from a judgment of the Hon'ble Apex Court in the case of Raj Kumar vs. Ajay Kumar reported in 2011 ACJ 1, the learned counsel appearing for the Cross Objection would submit that the principles enunciated for fixing the loss of further earning capacity with reference to the accident, her permanent disability has been completely overlooked. Admittedly, in this case, the claimant under treatment as inpatient from 20.01.2001 till 14.02.2001 and even after the discharge when her left leg was amputated she has once again taken treatment for a period of 3 to 4 months as outpatient for the pain and suffering caused in her right leg suffered to the crush injury. Therefore, when the learned Tribunal came to the conclusion that the claimant had suffered permanent disability of 80%, the Tribunal ought to have determined the loss of future earning capacity properly. Without doing that the claimant being a woman, the Tribunal again failed to determine as to whether her permanent disability has affected her earning capacity.

6.The learned counsel appearing for the Cross Objectors would submit that the Tribunal has failed to fix the current monthly income of the claimant. I could find some force in his submissions, the reason is, the claimant was working as vegetable vendor earning a sum of Rs.4,000/- per month. No doubt sufficient documents have not been produced. But the Tribunal after fixing her age at 51, in all fairness, should have adopted the principles enunciated by the Hon'ble Apex Court reported in 2009 [6] SCC 121 [Sarla Verma and Others vs. Delhi Transport Corporation]. However, since the Tribunal has not considered the loss of future earning capacity, this Court is inclined to modify the award by fixing the notional monthly income at Rs.4,500/- Accordingly, the notional monthly income is fixed, at Rs.4,500/- instead of 2,000/- [4500 x 12 x 11= 594000 x 80% = 475200]. So far as the permanent disability is concerned, Doctor has assessed 80%, therefore fixing Rs.2000/- per percentage of disability, this Court is inclined to award Rs.1,60,000/- at the rate Rs.2000/- per percentage, totally granting a sum of Rs.6,35,200/- as compensation [475200 + 160000 = 635200].

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7.For the above reasons, this Court finds no merits in the appeal filed by the Managing Director of Tamil Nadu State Transport Corporation, Vellore and the same is dismissed and the Cross Objection stands allowed quantifying to Rs.2,44,200/-.

8.There was a direction by this Court on 22.07.2010 to deposit a sum of Rs.2,00,000/- in the credit of of M.C.O.P.No.5464 of 2001 on the file of the Motor Accident

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Claims Tribunal, [IV Small Causes Court], Chennai, the learned counsel for the claimant submitted that no such deposit has been made as per the direction given by this Court. Therefore, appellant / Transport Corporation in C.M.A.No.1854 of 2010 is directed to deposit the entire award amount **along with interest at 7.5% p.a. from 23.3.2001, the date of filing of the petition*** to the credit of M.C.O.P.No.5464 of 2001 on the file of Motor Accident Claims Tribunal, [IV Small Causes Court], Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is open to the claimant to withdraw the same, by making necessary applications. No costs. Consequently, connected M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar(CO)
dt. 29.02.2016

Corrected as per order
dt. 6.4.2016 & made herein

Sd/-
Assistant Registrar (CO)
dt. 29.04.2016

//True Copy//

Sub Assistant Registrar

sri

To

1. The Motor Accident Claims Tribunal,
[IV Small Causes Court], Chennai.

substituted to the order already despatched on 4.4.16

2. The Section Officer, VR Section,
High Court, Madras.

+2ccs to Mr.P. Naratarjan, Advocate Sr.21900*

C.M.A. NO.1854 OF 2010 &
CROSS OBJ.NO.4 OF 2014
& M.P.NO.1 OF 2010

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TEJ(CO)
EU 15.03.16
EU 03.05.16

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