

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-10-2015

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THE HONOURABLE MR. JUSTICE B.RAJENDRAN

C.M.A. No. 3297 of 2009

The Managing Director
Tamil Nadu State Transport Corporation Ltd
Villupuram .. Appellant /Respondent

Versus

Saroja .. Respondent/Petitioner

Appeal filed under Section 173 of The Motor Vehicles Act against the Decree and Judgment dated 31.10.2006 made in M.A.C.T.O.P. No. 173 of 2005 on the file of The Motor Accident Claims Tribunal (Subordinate Court) Gingee.

For Appellant : Mr. N. Anand
For Respondent : Mr. M.R. Sivakumar

JUDGMENT

The Tamil Nadu State Transport Corporation Limited, Gingee, represented by its Managing Director is the appellant in this Civil Miscellaneous Appeal. The appellant is aggrieved by the Judgment dated 31.10.2006 made in M.A.C.T.O.P. No. 173 of 2005 whereby the Motor Accident Claims Tribunal (Subordinate Court) Gingee has awarded a sum of Rs.4,02,000/- as compensation payable by the corporation to the respondent herein for the injuries sustained by her in an accident that took place on 22.08.2005.

2. The respondent herein has filed M.A.C.T.O.P No. 173 of 2005 contending that on 22.08.2005 at about 22.45 hours, when she was travelling in a bullock cart along with six others from Thenputhupattu Village towards market committee, near Saranoor Cross Road, the bus bearing Registration No. TN 23 N 1257 was driven by its driver in a rash and negligent manner and hit the bullock cart from behind. In the impact, the claimant sustained multiple grievous injuries and she was admitted in Government Hospital, Gingee. Thereafter, she was referred to Government Hospital, Pondicherry for further treatment. At the time of the accident, the claimant was 47 years old and earning Rs.6,000/- per month by engaging herself in vegetable vending business, besides doing agricultural work. Therefore, the claimant filed

the claim petition claiming a total compensation of Rs.6,00,000/-.

3. The transport corporation resisted the claim petition by contending that the driver of the bus, on seeing the bullock cart proceeding in the front, applied brake to avoid collision, however, due to rain, the bus has slightly hit the bullock cart. There was no serious injuries sustained by the claimant or others who travelled in the bullock cart. The age and avocation of the claimant is not admitted. The injuries sustained are in the nature of bruises for which the compensation claimed by the claimant is excessive. In any event, the driver of the bus has not driven it in a rash and negligent manner and therefore the transport corporation denied the negligence on the part of its driver.

4. The Tribunal, on appreciation of the oral and documentary evidence, held that the accident has caused due to the negligence on the part of the driver of the transport corporation. As far as compensation is concerned, the Tribunal has considered the evidence of PW7, Doctor, who assessed the disability of the claimant and 40%. The Tribunal also taken note of the nature of injuries sustained by the claimant in the motor accident and awarded a sum of Rs.4,02,000/- as compensation to the claimant.

5. The learned counsel appearing for the appellant corporation would contend that as per the evidence of PW7, Doctor,, the claimant sustained 40% disability. While so, the Tribunal, instead of awarding Rs.1,000/- per percentage of disability, having regard to the nature of injuries sustained by the claimant, has awarded Rs.1,50,000/- towards disability, which is uncalled for. The amount awarded by the Tribunal towards pain and suffering at Rs.50,000/- is excessive. The Tribunal erred in awarding Rs.50,000/- towards mental agony which does not arise in a case of this nature. The amount of Rs.72,000/- awarded by the Tribunal towards loss of earning and Rs.15,000/- towards loss of future earning are without any basis especially when the claimant has not proved her monthly income. Therefore, the learned counsel for the appellant prayed for setting aside the award passed by the Tribunal.

6. The learned counsel for the claimant/respondent, on the other hand, would contend that the claimant has sustained greivous injuries on her forehead, right and left legs, lip, right hand elbow, The claimant was admitted in Government hospital, Gingee and later admitted in Government Hospital, Pondicherry for better treatment. The claimant underwent treatment for 5 days in the Government Hospital for the injujries sustained by her. In view of the injuries sustained by the claimant at the age of 47 years, she could not continue

her vegetable vending business as before and she was deprived of her regular income. In fact, the Tribunal ought to have adopted multiplier method to award compensation, but the Tribunal has failed to do so. In any event, having regard to the above aspects, the Tribunal has awarded a just and reasonable compensation amount and it does not call for any interference by this Court.

7. I considered the rival submissions made and also gone through the materials placed on record, including the award passed by the Tribunal.

8. The Transport Corporation has come forward with this Civil Miscellaneous Appeal questioning the quantum of compensation awarded by the Tribunal and the Corporation admits their liability to pay compensation amount.

9. The Tribunal has passed a common award in seven Original Petitions filed by those who were injured in the accident that took place on 22.08.2005, including the claimant/respondent herein, when they were travelling in the bullock cart. In the accident, all the seven persons were injured and all of them have filed claim petition separately. As far as the claimant/respondent is concerned, she has filed MCOP No. 173 of 2015 claiming compensation of Rs.6,00,000/- for the injuries sustained by her in the road accident on 22.08.2005.

10. It is seen from the records that the claimant/respondent was 47 years old at the time of accident. She claimed to have been earning Rs.6,000/- per month by doing vegetable vending business besides being an agricultural coolie. The claimant sustained multiple injuries in her forehead, lips, legs and hand for which she took treatment initially in Government Hospital, Gingee and thereafter for five days in Government Hospital, Pondicherry. The claimant was examined as PW6, who, in her evidence has deposed that by reason of the injuries sustained in the accident, she cannot lift any object, could not fold her hand and legs, as before. She has further deposed that her earning was totally deprived by reason of the injuries sustained by her in the accident. Therefore, having regard to the above deposition of PW6/claimant and the nature of injuries sustained by her, this Court is of the view that the Tribunal ought to have applied multiplier theory. It is needless to mention that even in case of injuries, having regard to the nature of injuries which has deprived the earnings of the injured, this Court can resort to award compensation by adopting multiplier theory. In this context, reference can be made to the decision of the Honourable Supreme Court reported in (Raj Kumar vs. Ajay Kumar and another) 2010 (2) TN MAC 581 (SC), wherein it was held that even in case of injury, if the evidence is clear that the claimant is totally disabled of earning any

kind of livelihood or could not effectively carry on activities and functions which he was carrying on before the accident or he was prevented/restricted from discharging his previous activities and functions but could carry on some other or lesser scale of activities or functions so as to continue to earn his livelihood, the Court can resort to apply multiplier theory provided there is loss of earning capacity. In that case before the Honourable Supreme Court, though 45% percentage of permanent disability was assessed by the Doctor, the Supreme Court had taken into consideration that the loss of earning capacity and functional disability can at best be 20%. It was also held by the Honourable Supreme Court that permanent disability with reference to whole body of a person cannot be assumed to be percentage of loss of earning capacity inasmuch as permanent disability may result in different percentage of loss of earning capacity in different persons depending upon nature of profession, occupation or job, age, education and other factors. Therefore, following the decision of the Honourable Supreme Court mentioned above, this Court is of the view that the trial Court ought to have awarded compensation to the claimant by adopting multiplier method.

11. If multiplier method is adopted, in the present case, the claimant was aged 47 years at the time of accident. Even though she claimed to have been earning Rs.6,000/- per month, in the absence of any proof for the same, this Court is of the view that she could have, at best, earned Rs.4,000/- per month through vegetable vending business and as an agricultural coolie, as claimed by her. As the claimant was aged 47 years at the time of accident, multiplier to be adopted is '13'. The disability assessed by PW7, Doctor is 40% and if it is taken into consideration, a sum of Rs.2,49,600/- ($\text{Rs.4000} \times 12 / 40\% \times 13$) could be awarded to the claimant towards disability. Accordingly, I hold that the claimant is entitled for a sum of Rs.2,49,600/- towards disability.

12. When compensation is awarded towards disability, the amount of Rs.15,000/- awarded towards injuries, Rs.72,000/- awarded towards loss of earning during the treatment period and Rs.50,000/- towards future loss of earning cannot be awarded and the amount awarded under the above headings by the Tribunal has to be disallowed.

13. As rightly pointed out by the counsel for the appellant Corporation, in a case of motor accident and the Tribunal awarded compensation under various heads in exercise of the powers conferred under the Motor Vehicles Act, the question of awarding any amount towards mental agony will not arise. Therefore, the sum of Rs.50,000/- awarded by the Tribunal towards mental agony is hereby disallowed.

14. The Tribunal has awarded Rs.50,000/- towards pain and suffering having regard to the age, nature of injuries and period of hospitalisation of the claimant. Therefore, I do not see any reason to reduce the amount awarded towards pain and suffering.

15. The claimant had sustained injuries in both her legs and in her hand. She was initially admitted in Government Hospital, Gingee from where she was taken to Government Hospital, Puducherry for better treatment. The claimant was admitted as an in-patient for 5 days. Having regard to the nature of injuries sustained by the claimant, this Court is of the view that she could have taken rest atleast for three months and in that event, a sum of Rs.15,000/- could be awarded at the rate of Rs.5,000/- per month towards attendant charges.

16. The Tribunal has not awarded any amount towards Extra Nourishment and Transportation charges and it ought to have awarded some amount towards the above. Having regard to the nature of injuries sustained by the claimant and her age at the time of accident, I hereby award a sum of Rs.15,000/- towards Extra Nourishment. I also award a sum of Rs.10,000/- towards transportation especially when she was shifted from Government Hospital, Gingee to Government Hospital, Puducherry for better treatment.

17. In the result, the award passed by the Tribunal is modified as mentioned hereunder:-

Disability	:	Rs.2,49,600.00
Pain and Suffering	:	Rs. 50,000.00
Attendant Charges	:	Rs. 15,000.00
Extra Nourishment	:	Rs. 15,000.00
Transportation charges	:	Rs. 10,000.00

		Rs.3,39,600.00
Rounded off to	:	Rs.3,40,000.00

18. In the result, the Civil Miscellaneous Appeal filed by the Transport Corporation is partly allowed by reducing the compensation amount awarded by the Tribunal from Rs.4,02,000/- to Rs.3,40,000/- (Rupees Three Lakhs Forty Thousand Only) as tabulated above. No costs. The Transport Corporation is directed to deposit the sum of Rs.3,40,000/- to the credit of M.C.O.P. No. 173 of 2005 on the file of Motor Accidents Claims Tribunal (Sub Court) Gingee, with interest as awarded by the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any,

already deposited. On such deposit, the claimant/respondent is entitled to withdraw the compensation amount with accrued interest.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

To

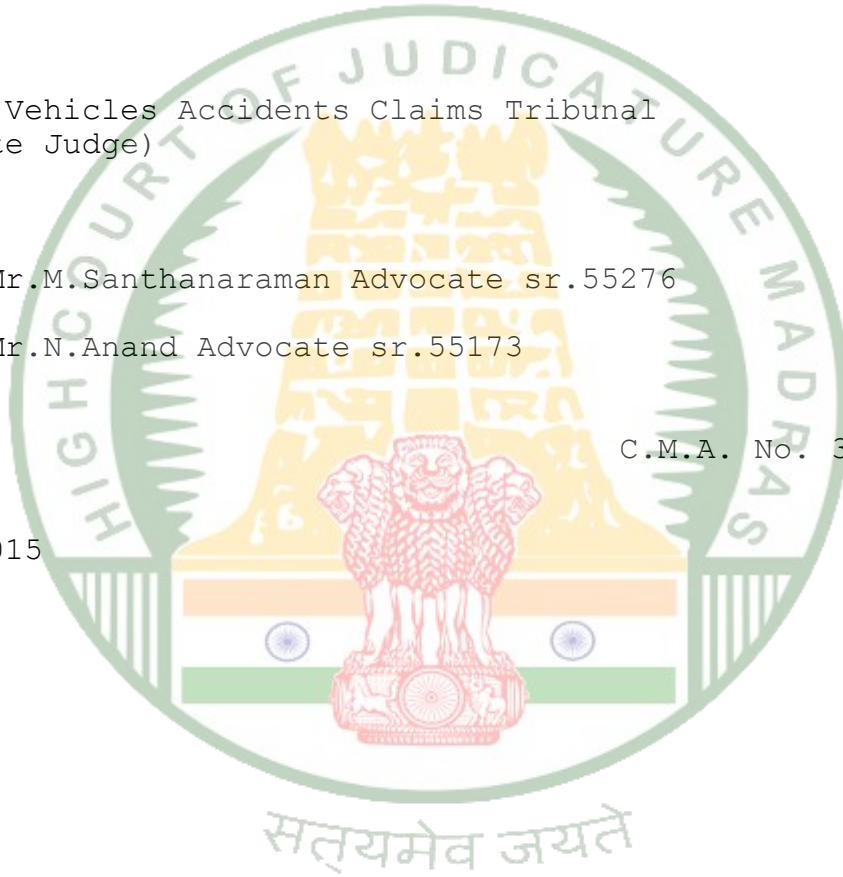
The Motor Vehicles Accidents Claims Tribunal
(Subordinate Judge)
Gingee

+1 cc to Mr.M.Santhanaraman Advocate sr.55276

+1 cc to Mr.N.Anand Advocate sr.55173

C.M.A. No. 3297 of 2009

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