

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 25.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.1468 of 2016 & Cross Objection No.69 of 2016

Metropolitan Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavan Salai,
Chennai - 2. ... Appellant in CMA.1468/16/Respondent
& Respondent in Cr.Obj.69/16

Vs

Vijayakumar @ Vijay ... Respondent in CMA.1468/16/Petitioner
& Cross Objector in Cr.Obj.69/16

C.M.A.No.1468 of 2016 is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 18.03.2013, made in MCOP.No.318 of 2011, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

Cross Objection No.69 of 2016 is filed under Order 41 Rule 22 of the Code of Civil Procedure against the judgment and decree dated 18.03.2013, made in MCOP.No.318 of 2011, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant:Mr.K.S.Suresh in CMA 1468/16 and
Respondent in Cross Obj 69/16

For Respondent:M/S.Ramya V Rao in CMA 1468/16 and
Cross objection in Cross obj 69/16

COMMON JUDGMENT

C.M.A.No.1468 of 2016 is preferred by the appellant-Transport Corporation against the award dated 18.03.2013, made in MCOP.No.318 of 2011, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2.Cross Objection No.69 of 2016 is filed by the claimant/injured against the award dated 18.03.2013, made in

MCOP.No.318 of 2011, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

3. On 03.02.2010 at about 15.15 hrs., while the claimant was riding his motor cycle bearing Registration No.TN-02-AJ-4064 at Sardar Patel Road, near Anna Salai Junction, Guindy, a bus bearing Registration No.TN-01-N-3844 belonging to the appellant Transport Corporation driven by its driver in a rash and negligent manner, dashed against the claimant, as a result, he has sustained multiple injuries all over his body. Immediately after the accident, he was admitted in Sri Balaji Hospital, Guindy, Chennai, for first aid and thereafter for better treatment, he was taken to Government General Hospital, Chennai. Subsequently, he filed a claim petition claiming a sum of Rs.10,00,000/- as compensation.

4. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the Transport Corporation and awarded a sum of Rs.6,28,303/- with interest at 7.5% per annum. Aggrieved by that award, the Transport Corporation as well as the claimant have filed the present appeal and cross objection respectively.

5. Learned counsel appearing for the appellant Transport Corporation submitted that the Tribunal, by fixing 30% disability, assessed the income towards permanent disability, that too by applying multiplier method, instead adopting percentage method as it is only an injury case. It is further submitted that the Tribunal has fixed Rs.10000/- as the monthly income of the claimant especially when there was no proof produced to substantiate the same, instead, he pleaded, it ought to have fixed Rs.4500/- as notional monthly income. On these grounds, he sought for modification of the award passed by the Tribunal.

6. Learned counsel appearing for the respondent/claimant, who is the Cross Objector in Cross Objection No.69 of 2016, submitted that though the Tribunal has rightly adopted the multiplier method for awarding compensation towards future loss of income, it went wrong by way of clubbing both permanent disability and loss of income, on the contrary, he pleaded, it would have awarded separate award for both the heads i.e. permanent disability and loss of earning capacity. It is further submitted that the nature of injuries of the claimant has made him permanently disabled, as a result, now, he is not able to walk without using walking stick, therefore, though the Doctor has fixed disability at 60%, the Tribunal has wrongly fixed 30% disability for computing compensation towards disability. It is her further contention that the claimant was

in the Hospital for about 53 days inpatient, therefore, the Tribunal ought to have awarded some amount towards loss of amenities. With these submissions, she prayed for enhancement of the compensation awarded by the Tribunal.

7. Heard the learned counsel appearing on either side and perused the materials available before this Court.

8. The only prime contention of the learned counsel for the appellant Transport Corporation is that the Tribunal ought not to have adopted multiplier method while computing compensation towards disability and on the contrary, the contention of the learned counsel for the claimant is that the Tribunal ought to have awarded compensation in both heads i.e., loss of earning capacity as well as permanent disability, as the injuries suffered by the claimant are grievous in nature.

9. From the Discharge Summary, marked as Ex.P4 before the Tribunal, it is seen that the claimant was admitted in the Government General hospital from 03.02.2010 to 26.03.2010, totally 53 days, as inpatient. It is further mentioned that he had suffered lacerated wound on his left forehead, lacerated wound on his left thigh, fracture of fibula head left side, besides, it is mentioned that split skin grafting for left thigh wound was done on 08.03.2010. Ex.P5 was also produced to show that he has been continuously taking treatment for the said injuries suffered by him in Divya Hospital, Chennai. Substantiating the above, Dr.Mathiazhagan-P.W.2 issued the disability certificate-Ex.P16. Learned counsel for the claimant has produced four photographs of the claimant, from which, it is seen that the injuries are very grave in nature and that his left thigh has been completely crushed.

10. Thus, in my view, it is a fit case for awarding compensation under both heads i.e. loss of earning capacity and disability. In a similar circumstances, the Hon'ble Division Bench of this Court in the case of United India Insurance Co. Ltd., Vs. Veluchamy and another [2005 (1) TNMAC 87 (DB)], by holding that the money cannot renew a physical frame that has been battered and shattered in the claimant's family, awarded the compensation under the heads of loss of earning capacity by applying multiplier method and then towards disability. For better appreciation, relevant portions of the said judgment are extracted below:

"8. Money cannot renew a physical frame that has been battered and shattered. All the Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the

general method of approach. In personal injury cases the Courts should not award merely token damages but they should grant substantial amount which could be regarded as adequate compensation. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame. It is well settled principle that in granting compensation for personal injury, the injured has to be compensated, (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages.

9. In an accident, if a man is disabled for the work, which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes has lost all earning capacity he possessed before and he is required to be compensated on the basis of total loss. An injured person is compensated for the loss which he incurs as a result of physical injury and not for physical injury itself. In other words, compensation is given only for what is lost due to accident in terms of an equivalent in money insofar as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, but only values totality of the harm which the loss has entailed: the loss of amenities of life and infliction of pain and suffering; the loss of the good things of life, joys of life and the positive infliction of pain and distress."

In the above said case, the Insurance Company therein questioned the compensation awarded under the heads of loss of earning

capacity and disability in a injury case. The Hon'ble Division Bench of this Court, by holding that silver rod and screw were inserted by way of surgery and as such, the same would undoubtedly affect the earning capacity of the claimant, awarded compensation under both the heads.

11. Therefore, by following the above said judgment, this Court is inclined to award compensation under both heads i.e towards loss of earning capacity and towards disability. At the time accident, the claimant was 47 years old and he was working as Assistant Manager in G.M.S.Courier and he has also produced the salary certificate, marked as Ex.P11, to show that he was earning a sum of Rs.12,000/- per month, however, since no income tax particulars or bank statements were produced, the Tribunal has fixed a sum of Rs.10,000/- as his monthly income, which is reasonable amount and therefore, the same is hereby confirmed. Thereafter, the Tribunal has also rightly adopted multiplier '13' as per judgment of the Hon'ble Apex Court in the case of Sarala Varma and others v. Delhi Transport Corporation and another [2009 (2) TNMAC 1 (SC)]. The Tribunal has also rightly fixed 30% disability though the Doctor assessed the disability at 60%, for, it was only functional disability, not the whole body disability. Accordingly, it has awarded a sum of Rs.4,68,000/- ($10000 \times 12 \times 13 \times 30\%$) towards permanent disability, however, this Court hereby treats the said sum towards loss of earning capacity. For awarding compensation towards loss of disability, this Court hereby adopts percentage method and accordingly, it is hereby awarded a sum of Rs.90,000/- (30×3000) towards disability by fixing Rs.3000/- per percentage of disability.

12. Apart from the above, taking note of the fact that the claimant was in continuous treatment for about 53 days as inpatient and that his left thigh was completely crushed as seen from the photographs produced by the claimant, this Court hereby awards a sum of Rs.1,00,000/- towards pain and suffering, instead of Rs.45,000/-. For the above said reasons, this Court hereby awards a sum of Rs.20,000/- towards transportation and Rs.30,000/- towards extra nourishment, instead of Rs.5,000/- and Rs.8000/- respectively awarded by the Tribunal. Towards loss of amenities, this Court hereby awards a sum of Rs.50,000/-, for, due to the said injuries, he may not be able to sit or squat or walk without the support of others. Taking note of the fact that the claimant would not have gone for work for about six months, the Tribunal has awarded a sum of Rs.60000/- towards loss of income and therefore, the same is hereby confirmed. Again, Rs.1000/- awarded by the Tribunal towards loss of clothing is also confirmed. According to the medical bills produced by the claimant, the Tribunal has awarded a sum of Rs.41,303/- and therefore, the same is hereby confirmed.

13. In fine, for the reasons stated above, the Civil Miscellaneous Appeal filed by the Transport Corporation stands dismissed and the Cross Objection filed by the claimant stands allowed to the extent mentioned above. Consequently, the appellant Transport Corporation is directed to deposit the entire award amount of Rs.8,60,300/- (round off figure) along with interest at 7.5% per annum from the date of claim petition till the date of realization, less the amount already deposited if any, to the credit of M.C.O.P.No.318 of 2011, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire award amount along with accrued interest by moving appropriate application before the Tribunal. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.

+1cc to Mr.K.S.Suresh, Advocate Sr.69131

+1cc to Mr.A.N.Viswanatha Rao, Advocate Sr.69852

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C.M.A.No.1468 of 2016 &
Cross Objection No.69 of 2016

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