

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2016

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

C.M.A.No.125 of 2015

And

M.P.No.1 of 2015

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division,
Kancheepuram. ... Appellant/Respondent

Vs.

P.Kuppan ... Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree passed by the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai made in M.C.O.P.No.2002 of 2011 dated 10.12.2013.

For Appellant : Mr.K.J.Sivakumar

For Respondent : Mr.K.Suryanarayanan

JUDGMENT

This Civil Miscellaneous Appeal has been directed against the impugned award passed by the learned Motor Accidents Claims Tribunal, V Small Causes Court, Chennai made in M.C.O.P.No.2002 of 2011 dated 10.12.2013 awarding a sum of Rs.2,77,000/- as against the claim of Rs.3,00,000/- for the multiple injuries, namely, compound grade III fracture of the right elbow joint with fracture of the lower end of humerus condyle suffered by the claimant. Aggrieved by the impugned award amount, the appellant/ State Transport Corporation has filed this appeal on the ground that the learned Tribunal has erroneously awarded a sum of Rs.2,16,000/- for loss of earning power towards 40% disability under multiplier method.

2.The learned counsel appearing for the appellant/ State Transport Corporation heavily assailing the impugned award would contend that the bus belonging to the Transport Corporation was coming with moderate speed. The claimant who was travelling as passenger kept his right hand outside the bus mindless of the consequences and as his hand was kept outside the window, one

lorry standing in the opposite direction just crossed against the bus. As a result, the claimant sustained hand injuries. Therefore, the negligence has to be fixed only on the injured. This aspect has been completely over-looked by the Tribunal. On the contrary, accepting the evidence of Doctor N.Saichandran - P.W2, who assessed the disability of the injured at 45% partial permanent disability, the learned Tribunal fixed the disability at 40% and by applying the multiplier method, the learned Tribunal has awarded a sum of Rs.2,16,000/- towards loss of earning power. Since the multiplier method cannot be applied in the present case, awarding a huge amount of Rs.2,16,000/- towards loss of earning power is liable to be interfered with, he pleaded.

3.Opposing the above contention, the learned counsel appearing for the claimant/ respondent submitted that it is a clear case of injury arising due to a motor accident caused by the rash and negligent driving of the driver of the bus who drove the vehicle and dashed against the stationed lorry. In the unfortunate accident, the claimant suffered compound grade III fracture of the right elbow joint with fracture of the lower end of humerus condyle. He was also treated as in-patient from 07.05.2011 to 21.08.2011.

4.To prove the case of the accident and also the grievous injuries sustained by the claimant, the petitioner/ respondent herein was examined as P.W.1 and he has also deposed the fact that how he had sustained injuries due to the rash and negligent driving of the driver of the bus belonging to the appellant/ State Transport Corporation. On the side of the respondent/ appellant herein, the driver of the appellant/ State Transport Corporation was examined as R.W.1.

5.That apart, the evidence adduced by R.W.1 that while he was driving the offending vehicle along with Mambakkam Railway Gate, slowly and consciously, a water tanker lorry was standing on the opposite side and in order to pass the standing lorry, he tried to overtake the lorry. However, when he cautioned the passengers to keep their hands inside the bus, the claimant has protruded his hand outside the bus. Therefore, he was carelessly keeping his hand outside the bus and as a result, he sustained injuries.

6.On this basis, accepting the rash and negligent driving of the offending vehicle, the Tribunal has given a finding against the driver of the bus. Subsequently, while fixing the nature of injuries, after accepting the evidence adduced by P.W2, Doctor N.Saichandran, the Tribunal assessed the disability at 40% partial permanent disability. The disability certificate produced by the claimant would show that he had suffered 45% partial permanent disability. Since the certificate issued by

Tamil Nadu Hair Dressers Union, Ex.P4 shows that the claimant has received a sum of Rs.10,000/- as monthly income, the Tribunal fixed a sum of Rs.5,000/- as his monthly income and by applying the multiplier method, it has fixed a sum of Rs.2,16,000/- towards loss of earning power.

7.This Court finds merits on the submissions made by the learned counsel appearing for the claimant/ respondent. It is not in dispute that the claimant sustained injuries in the accident that was caused by the rash and negligent driving of the driver of the bus belonging to the appellant/ State Transport Corporation and he has taken treatment as in-patient from 07.05.2011 to 21.08.2011 and K wire fixation was done and removed and AE slab was also applied and P.W2 Dr.N.Saichandran, who deposed before the Tribunal was also examined the claimant clinically. On the basis of the discharge summary and disability certificate certifying that the claimant has suffered 45% partial permanent disability produced by the claimant, the Tribunal assessed the disability at 40% partial permanent disability.

8.With regard to award of compensation towards loss of earning power, as rightly contended by the learned counsel appearing for the claimant/ respondent, although a certificate was issued by the Tamil Nadu Hair Dressers Union marked as Ex.P4 in favour of the claimant that he was earning a sum of Rs.10,000/- monthly, the Tribunal, without accepting the certificate as such, has fixed the notional monthly income of Rs.5,000/-. It is seen that the claimant had suffered grievous injuries as deposed by P.W2 - Doctor which is extracted below:

"The petitioner sustained compound grade III fracture of the right elbow joint with fracture of the lower end of humerus condyle, wound cleaning and K wire fixation was done and removed, bone united in a mal position causing right elbow joint deformed with movements only 30 degree is possible, right hand grip and active use is reduced and restricted, right elbow joint deformed scare adherence. Active use with right hand work is not possible."

9.By taking note of the above said deposition of P.W2 - Doctor, the learned Tribunal by adopting multiplier method, fixed multiplier '9' as per the decision of the Hon'ble Supreme Court in the case of Sarla Varma and others Vs. Delhi Transport Corporation and another (2009 (2) TANMAC Vol.2) and thereby it has awarded a sum of Rs.2,16,000/- (Rs.5,000/- X 12 X 9 X 40%) towards loss of earning power. Thus, this Court is unable to find any infirmity on the reasonable compensation awarded by the Tribunal.

10. Apart from that, the learned Tribunal has also awarded a compensation under various heads as stated below:

Loss of earning for 3 months	: Rs.	15,000/-
Transportation	: Rs.	5,000/-
Extra nourishment	: Rs.	5,000/-
Damage to clothes	: Rs.	1,000/-
Medical expenses	: Rs.	5,000/-
Attender charges	: Rs.	5,000/-
Pain and suffering	: Rs.	25,000/-

11. Since the above said compensations are just and reasonable one, the same are not disturbed. Accordingly, the award of the Tribunal is confirmed and the civil miscellaneous appeal is dismissed.

12. It is brought to the notice of this Court that the State Transport Corporation has deposited only the statutory deposit of Rs.25,000/-. Hence, the State Transport Corporation is directed to deposit the balance of the compensation amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this order. It is needless to mention that, on such deposit being made, the respondent/ claimant is permitted to withdraw the entire compensation amount with accrued interest and costs on filing proper application before the Tribunal.

13. In the result, the civil miscellaneous appeal is dismissed and the judgment and decree passed by the Motor Accidents Claims Tribunal, Vth Small Causes Court, Chennai made in M.C.O.P.No.2002 of 2011 dated 10.12.2013 is confirmed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Vth Small Causes Judge,
Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.866

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.684

C.M.A.No.125 of 2015
and M.P.No.1 of 2015

SR(CO)
CA(27/04/2016)