

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 22.11.2016

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THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.1343 of 2015 & Cross Objection No.18 of 2016

The Managing Director,
Tamil nadu State Transport Corporation Ltd.,
Villupuram.

.. Appellant in CMA.1343/15/
& respondent in Cr.Obj.18/16/
Appeallant

Vs

P.Ramaswamy

.. Respondent in CMA 1343/15
& Cross Objector in
Cr.Obj.18/16/Respondent

C.M.A.No.1343 of 2015 is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 30.06.2014, made in MCOP. No.4409 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Judge, Chennai.

Cross Objection No.18 of 2016 is filed under Order 41 Rule 22 of the Code of Civil Procedure against the judgment and decree dated 30.06.2014, made in MCOP. No.4409 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Judge, Chennai.

CMA No.1343 of 2015

For Appellant : Mr.K.J.Sivakumar
For Respondent : Mr.F.Terry Chella Raja

Cross Obj.No.18 of 2016

For Cross Objector : Mr.F.Terry Chella Raja

For Respondent : Mr.K.J.Sivakumar

COMMON JUDGMENT

C.M.A.No.1343 of 2016 is preferred by the appellant-Transport Corporation against the award dated 30.06.2014, made in MCOP. No.4409 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Judge, Chennai.

2.Cross Objection No.18 of 2016 is filed by the injured/claimant against the award dated 30.06.2014, made in MCOP. No.4409 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Judge, Chennai.

3. On 27.07.2009 at about 12.30 hrs., while the claimant was travelling as a passenger in the respondent bus bearing Registration No.TN-32-N-2358 from Chennai to Chengalpattu at the GST Road, near Venkateshwari theater, the driver of the said bus driven in a rash and negligent manner and hit against the lorry moving in front of the bus, as a result, the claimant sustained multiple injuries in all over his body. Immediately after the accident, he was admitted in the Chengalpet Medical College Hospital for about 6 days i.e. from 27.07.2009 to 02.08.2009 as inpatient. Subsequently, he filed a claim petition claiming a sum of Rs.5,00,000/- 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 bus belonging to the appellant Transport Corporation and awarded a sum of Rs.2,65,000/- with interest at 7.5% per annum. Aggrieved by that award, the Transport Corporation as well as the claimants have filed the present appeal and cross objection respectively.

5. Learned counsel appearing for the appellant Transport Corporation has questioned only the quantum of compensation awarded by the Tribunal by contending that after the accident, the claimant was admitted in a Government Hospital and he took treatment only for 6 days and thereafter, the doctor, who examined the claimant, issued the disability certificate assessing the disability at 45%. However, without taking note of such fact, the Tribunal has mechanically fixed the disability of the claimant at 65% and thereby, it has awarded a sum of Rs.1,30,000/- towards disability by fixing exorbitant amount of Rs.2000/- towards per percentage of disability. Thus, he prayed for modification of the compensation awarded by the Tribunal on the head of disability.

6. Learned counsel appearing for the respondent/claimant, who is the Cross Objector in Cross Objection No.18 of 2016, submitted that the claimant has suffered grievous injuries. To substantiate the same, he has also produced the disability certificate, marked as Ex.P6, wherein it is stated that the claimant has suffered head injury and knee injury, due to which, he is feeling unsteady while closing eyes and suffered tibial spine fracture, pain and stiffness of knee joint (Lt.) and that the movements are painful and restricted by 25 degrees. Thus, he contended, due to such implication, the claimant is not able to do his work as done before, as he was working as a salesman at the time of accident. When such factum was pleaded before the Tribunal, it has, without applying multiplier method, wrongly adopted percentage method for arriving compensation towards loss of earning capacity, which has ultimately amounted to in granting very less amount.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Given the facts and circumstances of the case, the only issue, that has to be decided in this case, is whether it is a fit case for applying multiplier method or percentage method for computing the loss of earning capacity of the claimant? As could be seen from the Ex.P2-discharge summary, the claimant was aged about 38 years old at the time of accident. According to the claimant, he was working as Salesman in ANR Shop and was earning a sum of Rs.8000 per month, but, to prove the same, no document was marked. From the discharge summary, marked as Ex.P2, it is seen that the claimant was admitted in the Chengalpet Medical College Hospital from 27.07.2009 to 02.08.2009, i.e for about 6 days as inpatient and it is also stated that the claimant had suffered Frontal lobe SDH cerebral edema, fracture mandible symphysis and fracture tibial spine left knee and loosening of teeth and for such, conservative treatment was given for brain and fracture. Such factum was also corroborated from the disability certificates marked as Exs.P4 and P6 issued by the Dr.T.S.Kalkura-P.W.2 and Dr.Saravana Bavanantham-P.W.3, respectively. In such scenario, it is also more appropriate to extract below the observations made by the P.W.2-Dr.T.S.Kalkura in the disability certificate, marked as Ex.P4.

Due to loosening and displacement of lower 6 teeth, patient is having deranged occlusion causing mastigatory dysfunction and due to scar in the lower part of chin causing disfigurement. Certificate has been issued as per AIIMS - 1981 guidelines and gazette

Notification-1986.

Likewise, observations of P.W.3-Dr.M.Saravanabavanantham about the injuries suffered by the claimant in the disability certificate, marked as Ex.P6, are stated below:

i. Post traumatic Vertigo 10%
(Tests done DIX Hall pike and claorie tests were +ve) Test = by hyper extending the neck, it was noticed of extra ocular movements.

ii. Sensory ATAXIA (test = Romberg's test +ve, grade one (while closing eyes, he feels unsteady and falling type attitude presentation noticed) Finguer - Nose test +ve finguer deviating while touching nose, straight line walking test +ve = staggering) degree one 20%.

iii. Tibial Spine fracture, pain and stiffness of knee joint (Lt.) Movements are painful and restricted by 25 degrees in Flexion and Extension 15%.

9. It is deposed by the Dr.T.S.Kalkura-P.W.2 before the Tribunal, by assessing the disability at 40%, that the claimant had suffered lacerated injury over chin and loosening of lower teeth, therefore, due to loosening and displacement of lower 6 teeth, the claimant had suffered deranged occlusion causing mastigatory dysfunction and due to scar in the lower part of chin, it has caused disfigurement. Likewise, P.W.3-Dr.M.Saravana Bavanantham, on examining the claimant, assessed the disability at 45% partial permanent for head injury and fracture of left tibial spine, due to the same, he deposed, the claimant had suffered from post traumatic Vertigo, sensory ataxia and pain and stiffness of knee joint, due to the same, movements are painful and the same is restricted by 25 degrees in flexion and extension 15%.

10. Thus, from the above said depositions of the Doctors as well as their observations in the disability certificates, in my view, the claimant will not be able to do his work as done before, especially as he is being a salesman. Therefore, this Court is inclined to apply the multiplier method for computing the compensation towards loss of earning capacity. So holding, this Court, by following the judgment of the Hon'ble Apex Court in SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009) 4 MLJ 997, hereby applies multiplier '15' as the claimant at the time of accident was aged about 38 years as could be seen from the discharge summary, marked as Ex.P2. It was claimed that he was working as Salesman in ANR shop and was earning a sum of Rs.8000/- per month, however, to substantiate the same, no document was produced by the claimant. Therefore, this Court hereby fixes a

sum of Rs.6000/- as the monthly income of the claimant as done by the Tribunal.

11. It is seen from the disability certificates that one doctor has assessed the disability at 40% and another doctor has assessed the disability at 45% as partial permanent disability, therefore, this Court, for computing loss of earning capacity, is inclined to fix the disability at 20%. Accordingly, by fixing so, this Court hereby awards the compensation towards loss of earning capacity, instead of compensation awarded under the head of disability, by taking into account 50% of his income towards future prospects as well.

Salary of the claimant = Rs.6000/-
p.m.

50% of the salary to be added as future prospects =
Rs.6000+3000
= Rs.9000/- p.m.

Loss of earning capacity after multiplier of
15 is applied (Rs.9000 x 12 x 15 x 20%)
=Rs.3,24,000/-

Except the above modification, all other compensations awarded by the Tribunal under various are hereby confirmed as the same are just and reasonable compensation.

12. In toto, this Court hereby awards a sum of Rs.4,59,000/- as total compensation. The appellant Transport Corporation is directed to deposit the entire award amount 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.4409 of 2011, on the file of the Motor Accident Claims Tribunal, II Small Causes Judge, 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 same by moving necessary application before the Tribunal.

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, connected miscellaneous petitions are closed. No Costs.

-Sd/-

Asst.Registrar

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Sub Asst. Registrar

To

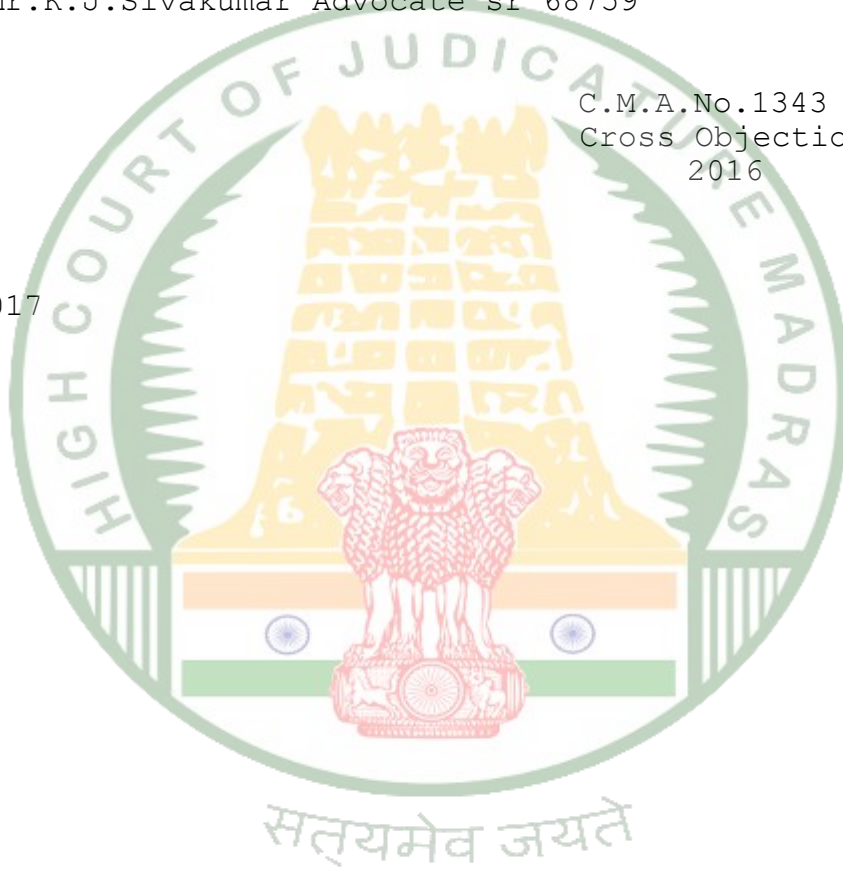
1.The Motor Accidents Claims Tribunal,
II Small Causes Judge, Chennai.

+1 cc to M/s.M.Malar Advocate sr 67973

+1 cc to Mr.K.J.Sivakumar Advocate sr 68759

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