

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1829 of 2016

The Managing Director
State Express Transport Corporation
Pallavan Salai
Chennai 600 002

Appellant/Respondent

-Vs-

T.Murugaiyan

Respondent/Petitioner

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 08.03.2016 made in M.C.O.P.No.7541 of 2014 passed by the Motor Accidents Claims Tribunal, (II Judge, Court of Small Causes), Chennai.

For Appellant :: Mr.K.J.Sivakumar

For Respondent :: Mr.Amar D.Pandiya

JUDGMENT

The Managing Director of State Express Transport Corporation Limited has challenged the correctness of the impugned award dated 8.3.2016 passed by the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai in M.C.O.P.No.7541 of 2014, awarding a sum of Rs.10,21,000/- payable with interest at the rate of 7.5% per annum from the date of filing of the petition, namely, 22.12.2014 till the date of deposit within two months from the date of the order, on the ground that the Tribunal had miserably failed to note that when no valid document was filed by the respondent to prove his age, it ought not to have taken the permanent disability of the victim at 70%, which is on the higher side. It is also the further argument of the learned counsel for the appellant that the Tribunal has committed yet another mistake in adopting the multiplier method to calculate the loss of future earning of the injured, because it is not a fit case for adopting the multiplier method, since the injured has not proved how the disability affected his profession after the accident.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. It is not in dispute that when the respondent was standing at Kodapattinam opposite to Chendur Hotel, E5 Koovathur Police Station limit at about 02.00 hours on 23.11.2014, a bus

bearing Registration No.TN-01-AN-0149 belonging to the appellant Corporation proceeding towards Chennai and driven by its driver in a rash and negligent manner, dashed against the respondent, as a result he sustained grievous injuries. Initially the injured was given first aid in the Government Hospital, Chengalpattu and thereafter he was admitted in the Meenakshi Hospital, Tanjore. In the meanwhile, First Information Report marked as Ex.P1 was also registered in Crime No.337 of 2014 on the file of E5 Koovathur Police Station under Sections 297 and 337 of IPC on 23.11.2014 at about 11.00 hours. Ex.P3-discharge summary issued by the Meenakshi Hospital, Tanjore clearly shows that the injured was admitted on 25.11.2014 and after 20 days, he was discharged only on 15.12.2014. Considering the long period of treatment undergone by the injured at the Meenakshi Hospital, Tanjore from 25.11.2014 to 15.12.2014 and also taking into account that the injured had suffered fracture of medial femoral condyle and lateral tibial condyle of right knee, crush injury in the B/L foot and internal deglove injury in the right thigh, for which CRIF with cancellous screw fixation of right knee was done, the Tribunal has come to the conclusion that the injured had suffered multiple injuries. Again with regard to the cause of accident as to whether the accident had taken place because of the rash and negligent driving by the driver of the bus belonging to the appellant, on perusal of the Ex.P1 copy of the FIR registered at E5 Koovathur Police Station in Crime No.337 of 2014 for the offence under Sections 279 & 337 of IPC on 23.11.2014 against the driver, the Tribunal has rightly come to the conclusion that the accident took place only because of the rash and negligent driving by the driver of the bus belonging to the appellant Corporation. After arriving at the finding with regard to the cause of the accident, the Tribunal has also considered the fact that the injured had taken treatment as an in-patient for a long period and that the disability certificate issued by the doctor also showed that there was 70% partial and permanent disability. On the basis of Ex.P6-disability certificate that he was unable to stand and walk for a long time and also unable to climb the stairs, it has awarded a sum of Rs.3,000/- for each percentage of disability and arrived at a sum of Rs.2,10,000/- under the head of partial and permanent disability.

4. This apart, with regard to the loss of earning capacity/earning power of the respondent during the period of treatment, after going through his evidence that he was working as a Coolie and earning Rs.500/- per day and taking support from the deposition of Mr.M.Ragupathy, the Supervisor of Sri Sai Construction Private Limited, who was examined as P.W.3, stating that the respondent was employed as a daily wager, the Tribunal has fixed Rs.9,000/- per month as his monthly remuneration. When the cause of accident was proved beyond reasonable doubt and the evidence of Mr.M.Ragupathy-P.W.3 also supported the case of the respondent that he was working as a daily wager, the Tribunal, taking the monthly income at Rs.9,000/- per month, has arrived at the compensation under the head of loss of earning capacity. Therefore, this Court neither finds any error in fixing the compensation towards loss of earning capacity nor any defect in

fixing the disability at 70% for the grievous and multiple injuries suffered by the respondent in the accident. Viewed from any angle, this Court is not inclined to entertain the civil miscellaneous appeal.

5. For the reasons mentioned above, the civil miscellaneous appeal fails and it is dismissed, confirming the award of the Tribunal. Consequently, C.M.P.No.13436 of 2016 is also dismissed. Needless to mention that the appellant/Transport Corporation shall deposit the entire award amount together with interest thereon to the credit of the M.C.O.P.No.7541 of 2014 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai within a period of four weeks from the date of receipt of a copy of this order and it is open to the respondent/claimant to withdraw the same by making an application before the Tribunal. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Motor Accidents Claims Tribunal
(II Judge, Court of Small Causes)
Chennai

+1 cc to M/s.M.Selvam, advocate, sr.51027

+1 cc to Mr.K.J.Sivakumar, advocate, sr.51091.

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krd 25/10

C.M.A.No.1829 of 2016

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