

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2059 of 2016

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
37, Mettupalayam
Coimbatore ... Appellant

-vs-

Chinnasami
S/o Podiappan ... Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 19.06.2014 made in M.C.O.P.No.921 of 2009 on the file of the Motor Accident Claims Tribunal, (Additional Subordinate Judge), Tiruppur.

For Appellant :: Mrs.R.T.Sundari

For Respondent :: Mr.Ma.P.Thangavel

JUDGMENT

The Managing Director of Tamil Nadu State Transport Corporation Limited, Coimbatore, questioning the correctness of the impugned award passed by the Motor Accident Claims Tribunal (Additional Subordinate Judge), Tiruppur in M.C.O.P.No.921 of 2009 dated 19.6.2014 awarding a sum of Rs.3,99,790/-, as against the claim of Rs.7,00,000/-, along with interest at the rate of 7.5% per annum for the multiple injuries sustained by the claimant, aged about 60 years, in the accident, has filed this appeal.

2. Learned counsel for the appellant Corporation has submitted that when the respondent claimant was driving the vehicle bearing Registration No.TW 50 D 9461 from north to south in the Kangeyam to Tirupur road on 2.6.2009 at about 8.00 A.M., near Nalliwaiy Bridge, a bus bearing Registration No.TN 33 N 1800 belonging to the appellant Corporation driven by its driver was coming behind and since the claimant was driving his vehicle carelessly, he sustained injuries, as a result some of his teeth

got broken and also sustained injuries on his face, right hand, thumb finger in the right hand. After giving first aid at the Government Hospital, Kangeyam, he was shifted to PSG Hospital, Coimbatore and admitted as an in-patient. For the reason that he was taking treatment for three months due to the injuries, he made the claim. But the Tribunal, swayed by the fact that there was loss of teeth and other injuries in various parts of the body, has wrongly come to the conclusion that 39% disability has been sustained by the claimant and awarded a sum of Rs.2,42,190/- by fixing the notional income at Rs.5,000/- per month and added 15% towards future prospects considering the age of the injured at 60 years and applying the multiplier of 9, i.e., $(5750 \times 12 \times 9 \times 39/100 = \text{Rs.}2,42,190/-)$ towards the loss of income. Therefore the learned counsel submitted that the approach adopted by the Tribunal for fixing the notional income at Rs.5,000/-, without there being any acceptable evidence, and the addition of 15% towards future prospects on the said income is wholly unsustainable.

3. Per contra, the learned counsel for the respondent claimant submitted that the Tribunal has rightly fixed the notional income at Rs.5,000/- and also added 15% of the said income towards future prospects, on the basis of the ratio laid down by the Apex Court in the case of Syed Sadiq etc., v. Divisional Manager, United India Insurance Co.Ltd., 2014 (1) TN MAC 459 (SC), wherein the Apex Court, following the judgment in the case of Santosh Devi v. National Insurance Co.Ltd., 2012 (2) TN MAC 1 (SC), while considering the nature of injuries sustained by a vegetable vendor, has held that a reasonable percentage has to be added towards future prospects. Therefore he pleaded that no fault can be found with the impugned award.

4. Heard the learned counsel for the parties.

5. It is not in dispute that the injured claimant was travelling in the vehicle bearing Registration No.TW 50 D 9461 from north to south in the Kangeyam to Tirupur road on 2.6.2009 at about 8.00 A.M. It is at this point of time, near Nalliwai Bridge, a bus bearing Registration No.TN 33 N 1800 belonging to the appellant Corporation coming behind, driven by its driver in a rash and negligent manner, dashed against the injured and caused the accident, as a result the claimant sustained grievous injuries, namely, in the face, right hand and also lost two of his teeth in the upper jaw. Moreover, three or four fingers in his right hand also got severely damaged. Besides, he suffered fractures in various parts of the body. In view of the aforesaid accident, after giving first aid at the Government Hospital, Kangeyam, he was shifted to PSG Hospital, Coimbatore and admitted as an in-patient from 2.6.2009 to 15.6.2009. Subsequently, he was also continuously taking treatment for three more months. The Tribunal, considering the nature of

injuries sustained by the injured claimant at the age of 60 years in the head, face, shoulder mantle, maxilla, nose, damage to three or four fingers, loss of two teeth in the upper jaw, etc., due to the accident caused by the driver of the offending vehicle belonging to the Transport Corporation and the First Information Report registered in Crime No.446 of 2009 for the offence under Sections 279 & 337 of IPC on the file of Kangeyam Police Station against the driver of the offending vehicle, has rightly come to the conclusion that the negligence was on the part of the driver of the offending vehicle. In view of the above, accepting the case of the claimant that he was carrying on his avocation as a Mason and earning a sum of Rs.300/- per day, has fixed Rs.5,000/- as the notional monthly income, since no one from the side of the Transport Corporation has adduced any evidence to deny the claim of the injured. In my considered opinion, the Tribunal has reasonably fixed the notional monthly income at Rs.5,000/- by considering the age of the injured at 60 years and also considering the fact that the injured suffered grievous injuries as aforementioned in various parts of his body, has added 15% towards future prospects and also adopted the correct multiplier of '9' for arriving at the loss of earning power, which is in fine tune with the ratio laid down by the Apex Court in the case of Syed Sadiq etc., v. Divisional Manager, United India Insurance Co.Ltd., 2014 (1) TN MAC 459 (SC), wherein the Apex Court, while considering the nature of injuries sustained by a vegetable vendor, following the judgment in the case of Santosh Devi v. National Insurance Co.Ltd., 2012 (2) TN MAC 1 (SC), has held that a reasonable percentage has to be added towards future prospects. In the light of the above, the fixation of a sum of Rs.2,42,190/- under the head of loss of earning power i.e., $5750 \times 12 \times 9 \times 39/100 = \text{Rs.2,42,190/-}$ appears to be just and reasonable. The reason is that at the age of 60 years, when the claimant had suffered the aforementioned injuries in various parts of his body and was taking treatment from 2.6.2009 till 15.6.2009 as in-patient at PSG Hospital, Coimbatore and also continued his further treatment, he would have suffered much pain and suffering. Moreover, the loss of two teeth in the upper jaw has to be accepted as a permanent disability, since he cannot take any solid food at the age of 60 years and that would cause a severe impact on his health. In my considered opinion, the award of a sum of Rs.2,42,190/- towards loss of income, Rs.35,000/- towards pain and sufferings, Rs.25,000/- towards mental agony, Rs.10,000/- each towards nourishment and transportation and Rs.77,600/- towards medical expenses, totalling to a sum of Rs.3,99,790/- together with 7.5% interest per annum as ordered by the Tribunal, on the facts and circumstances of this case, cannot be found fault with. Accordingly, finding no error or infirmity with the impugned award, the civil miscellaneous appeal is dismissed. Consequently, C.M.P.No.15034 of 2016 is also dismissed. No costs.

6. Since the statutory amount of Rs.25,000/- for preferring appeal has alone been deposited, the appellant Corporation is directed to deposit the entire award amount along with interest thereon to the credit of the M.C.O.P.No.921 of 2009 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Judge), Tiruppur within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the respondent/claimant to withdraw the entire amount along with accrued interest by moving appropriate application before the Tribunal.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ss

To

1. The Additional Subordinate Judge
Motor Accident Claims Tribunal
Tiruppur

copy to

The Section Officer
VR Section
High Court Madras

+1 cc to M/s.R.Sundari Advocate sr 54054

सत्यमेव जयते

C.M.A.No.2059 of 2016

vsn(co)
aa25/10/2016

WEB COPY