

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 20.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.2401 of 2015
& Cross Objection No.2 of 2016

The Managing Director,
Tamil nadu State Transport Corporation,
No.3/137, Salamedu, Vazhuthareddy,
Villupuram.

... Appellant in CMA.2401/15
& respondent in Cr.Obj.2/16
/Respondent

Vs

K.Selvaganapathi

... Respondent in CMA 2401/15
& Cross Objector in Cr.Obj.2/16
/Petitioner

C.M.A.No.2401 of 2015 is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 01.11.2014, made in MCOP.No.3187 of 2012, on the file of the Motor Accident Claims Tribunal, Cuddalore (Special Sub-Court).

Cross Objection No.2 of 2016 is filed under Order 41 Rule 22 of the Code of Civil Procedure against the judgment and decree dated 01.11.2014, made in MCOP.No.3187 of 2012, on the file of the Motor Accident Claims Tribunal, Cuddalore (Special Sub-Court).

CMA No.2401 of 2015

For Appellant : Mr.S.Sairaman

For Respondent : Ms.Ramya V.Rao

Cross Obj.No.2 of 2016

For Cross Objector : Ms.Ramya V.Rao

For Respondent : Mr.S.Sairaman

COMMON JUDGMENT

C.M.A.No.2401 of 2015 is preferred by the appellant-Transport Corporation against the award dated 01.11.2014, made in MCOP.No.3187 of 2012, on the file of the Motor Accident Claims Tribunal, Cuddalore (Special Sub-Court).

2. Cross Objection No.2 of 2016 is filed by the claimant/injured against the award dated 01.11.2014, made in MCOP.No.3187 of 2012, on the file of the Motor Accident Claims Tribunal, Cuddalore (Special Sub-Court).

3. Background of the facts in a nutshell are as follows:

On 25.10.2012, at about 1.50 p.m., while the claimant was riding his motorcycle bearing Registration No.TN-31-AU-2369 from North to South at Chidambaram, a bus bearing Registration No.TN-32-N-2711 belonging to the appellant Transport Corporation driven by its driver in a rash and negligent manner, hit against the claimant and as a result, the claimant sustained grievous injuries in all over his body. Immediately after the accident, he was taken to Rajah Muthiah Medical College Hospital, Annamalai Nagar and thereafter, he was taken to Krishna Hospital, Cuddalore, for better treatment. The injured/claimed has 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.3,17,300/- 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 questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification. It is further submitted that though the Tribunal has awarded a sum of Rs.1,30,000/- towards 65% of disability, it has further awarded a sum of Rs.32,500/- towards pain and suffering by fixing Rs.500/- per percentage of disability, therefore, he prayed for deleting the said amount awarded towards pain and suffering. It is further submitted that as per the medical bills submitted by the claimant, the Tribunal has awarded a sum of Rs.89,800/- towards medical expenses, which cannot be disputed, however, he pleaded, the Tribunal has also awarded a sum of Rs.15,000/- towards future medical expenses, which is unwarranted as the claimant has been doing his work as done before. With these submissions, he prayed 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.2 of 2016, submitted that while awarding compensation towards disability, the Tribunal ought to have fixed Rs.3,000/- per percentage of disability, instated of

Rs.2,000/-, in the light of the judgment of this Court in National Insurance Company Limited vs. G.Ramesh, reported in 2013 (2) TN MAC 583. She further submitted that the Tribunal ought to have awarded compensation towards loss of earning during treatment period and also attender charges as the claimant took treatment for about 4 months in Krishna Hospital, Cuddalore, for undergoing surgeries. On these counts, she sought for enhancement of the compensation awarded by the Tribunal.

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

8. At the time of accident, the claimant was aged about 32 years and was working as Mason. He was also earning a sum of Rs.7,000/- per month. From the discharge summary, marked as Ex.P4, issued by the doctor-P.W.2, it is seen that the claimant has sustained the following injuries:

Fracture right frontal sinus with Fracture Right Orbital

Fracture Tibia Right

Fracture Neck of Femur Right

Open Fracture Shaft of Femur Right

Fracture left clavicle with A.C.Joint Dislocation Right

Finally, the Doctor-P.W.2, who examined the claimant, assessed the disability at 65% and thereby the Doctor has also issued a disability certificate, which was marked as Ex.P7 before the Tribunal. On examining the disability certificate, the Tribunal, by fixing Rs.2000/- per percentage of disability, has awarded a sum of Rs.1,30,000/- (65 x 2000) towards disability, which needs modification, in the light of the judgment of the this Court in G.Ramesh's case (cited supra), wherein this Court, by taking note of the the present state of economy and the rising prices, has fixed fixed Rs.3000/- towards per percentage of disability. Accordingly, this Court hereby awards a sum of Rs.1,95,000/- (65x3000) towards disability.

9. It is also seen from the discharge summary, marked as Ex.P4, issued by the Krishna Hospital, Cuddalore, that the claimant was admitted between 25.10.2012 and 08.11.2012 to undergo surgeries for the above said fractures. Again, for further treatment, he was readmitted in the same hospital from 28.01.2013 to 05.02.2013 as inpatient to diagnose non-union fracture shaft of femur right. Thus, it is clear that claimant would not have gone for work for about four months, therefore, by fixing his monthly notional income at Rs.5000/- per month as he was working as mason at the time of accident, this Court hereby awards a sum of Rs.20,000/- towards loss of earning during the treatment period.

10. Apart from the above, the Tribunal has awarded a mere sum of Rs.32,500/- towards pain and suffering, which, in my

view, needs modification, for, as stated above, the claimant had undergone various surgeries for about four months, therefore, by taking note of the trauma faced by the claimant during the said four months, this Court is inclined to enhance the said amount awarded towards pain and suffering. Accordingly, this Court hereby awards a sum of Rs.1,00,000/- towards pain and suffering.

11. With regard to the medical expenses, the Tribunal, as per the medical bills produced before it, has awarded a sum of Rs.89,800/- , therefore, the same is hereby confirmed. Again, a sum of Rs.10,000/- awarded towards transport expenses also is hereby confirmed. The Tribunal has also awarded a sum of Rs.20,000/- towards nutrition, which, in my view, needs modification, for, he had undergone various surgeries as stated above, which would require to take some healthy and nutritious and fruits to recover from the setback faced by him, thus, this Court hereby awards a sum of Rs.30,000/- towards nutrition.

12. Another contention of the learned counsel for appellant Transport Corporation that the Tribunal has wrongly awarded a sum of Rs.15,000/- towards future medical expenses, also cannot be sustained, as the claimant had already spent a huge sum of Rs.89,800/- towards his medical expenses for the various injuries sustained by him. Therefore, in my view, a sum Rs.15,000/- awarded needs to be enhanced, accordingly, a sum of Rs.25,000/- is hereby awarded towards future medical expenses. Apart from this, a sum of Rs.20,000/- awarded by the Tribunal towards loss of amenities being reasonable, the same also 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. The appellant Transport Corporation is directed to deposit the modified compensation of Rs.4,89,800/- with interest to the credit MCOP.No.3187 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment, failing which the interest will be 12% p.a. On such deposit, the claimant is permitted to withdraw the entire amount along with the accrued interest by moving appropriate application before the Tribunal. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special Sub Court,
Cuddalore.

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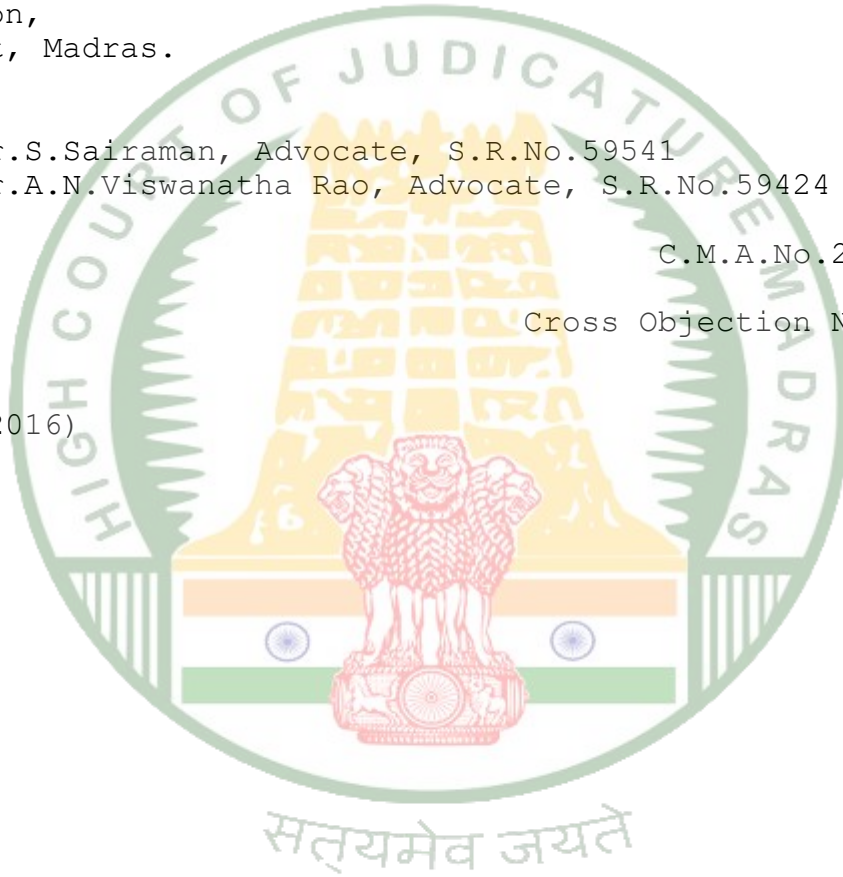
The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Sairaman, Advocate, S.R.No.59541

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.59424

C.M.A.No.2401 of 2015
&
Cross Objection No.2 of 2016

UG(CO)
CA(05/12/2016)



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