

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2397 of 2016 &
C.M.P.No.16644 of 2016

The Managing Director,
Tamil Nadu State Transport
Kumbakonam.

... Appellant/Respondent

Versus

K.Radhakrishnan ... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 21.04.2016 made in M.C.O.P.No.193 of 2014 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Ariyalur.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation, is directed against the correctness of the impugned award dated 21.04.2016 made in M.C.O.P.No.193/2014 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Ariyalur, awarding a sum of Rs.4,61,800/- with 9% interest per annum as against the claim of Rs.10,00,000/-.

2.According to the claimant, on 15.06.2014, at about 08.45 p.m., when the claimant was travelling as a bonafide traveller in TNSTC bus bearing Registration No.TN-45-N-3351 from Udayarpalayam to Chennai, near Thulankurichi lake, another bus bearing Registration No.TN 45 N 3512 belonging to same Transport Corporation came on the opposite direction in a rash and negligent manner and crashed the right side of the bus, in which the claimant was travelling. During the accident, the side steel pipe stabbed over the claimant's right shoulder and the same came out on his back side. When there was over bleeding coming out of his body, all the passengers noticed the claimant, who was crying due to unbearable pain and they arranged 108 Ambulance immediately and he was given first-aid in the Government Hospital, Jayamkondam, subsequently, shifted to

Sugam Hospital Kumbakonam and then to Meenakshi Hospital, Thanjavur, where he took treatment as in-patient from 16.06.2014 to 23.06.2014 and thereafter, he took treatment for three months.

3.Learned counsel for the appellant/Transport Corporation would submit that the Tribunal ought not to have taken the permanent disability as 38%, which is on the higher side and the Tribunal ought not have passed award on the head of loss of future earning capacity while passing award on the head of disability. It is pleaded by the learned counsel for the appellant/Transport Corporation that the award under two heads cannot be sustained in the eye of law and the same has to be set aside

4.This Court is not able to find any merit in anyone of the submissions made by the learned counsel for the appellant. The reason is that when the claimant was travelling from Udaiyarpalayam to Chennai in the bus belonging to the appellant/Transport Corporation, another bus belonging to the appellant/Transportation crashed the right side of the bus, in which the claimant was travelling. Due to rash and negligent driving of the driver of the offending vehicle, the accident had occurred. Immediately, a complaint was lodged before the Udaiyar Palayam Police Station and a case was registered in Crime No.121/2014 under Sections 279 and 337 of IPC alleging that the driver of the bus belonging to the Transport Corporation was solely responsible for the cause of accident. The copy of the F.I.R., which was marked as Ex.P1, corroborates the version of the claimant's case in respect of the negligence that has led to the accident, which ultimately caused grievous injuries to the claimant. The Tribunal has rightly come to the conclusion that the driver of the offending vehicle was only responsible for causing the accident and as a result the claimant sustained grievous injuries. The Tribunal, considering the fact that the injury being grievous in nature and that the claimant had sustained a contusion in the basal segment of right lung, partial collapse of the right lung and free air was seen in the right hemothorax, multiple displaced fractures are seen in the posterior and lateral aspects of right 5th, 6th and 7th ribs and relying upon 38% of disability given by PW2/Doctor, has arrived at 38% disability.

5.The learned Tribunal having accepted all the evidences produced by the injured witness that while he was travelling from Udaiyarpalayam to Chennai in a bus bearing Registration No.TN-45-N-3351, the said vehicle met with the accident with another bus bearing Registration No.TN-45-N-3512, the driver of the vehicle came in rash and negligent manner and caused accident. Due to the same, the claimant suffered multiple injuries all over the body. The Tribunal has rightly come to the conclusion that only due to careless driving of the driver of

the offending vehicle belonging to the appellant Transportation, has answered the negligence holding that the accident had occurred only due to rash and negligent driving of the driver of the bus and the said finding, is supported by Ex.P1, F.I.R. In the absence of contra evidence produced by the appellant, this Court is not able to find any merit on the question of negligence. While coming to question of compensation, it has been found that PW1 injured witness was working as a daily wager who sells fruits and his age was about 45 years at the time of accident. Considering the fact that he is earning a sum of Rs.15,000 p.m., but however, as there was no documentary evidence to prove his monthly income, the learned Tribunal fixed Rs.8,000/- as monthly income of the injured by following the decision in Syed Sadiq & Others v. Divisional Manager, United India Insurance Co. Ltd., reported in (2014 (2) SCC 735) wherein it has held as follows:

9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.... "

In P.Marudhachalam & Others versus K.Sridhar & Others (2015 (5) CTC 181), it is held thus: "13.As far as quantum is concerned, the Tribunal took nly a sum of Rs.3000/- as monthly income of the deceased. The said amount determined by the Tribunal is very low. Even in respect of an accident, which occurred in 1989, during a function organized by TISCO, at Jamshedpur, the Honourable Apex Court, fixed Rs.3000/- as monthly income for a home maker based on a report filed by Justice Chandrachud Commission appointed by the Honourable Apex Court to go into the said accident. Whereas in this case, the accident on 13.01.2007 and almost 15 years have gone by and the value of money has gone down, the inflation rate and purchasing power have also increased. Therefore, determining monthly income at Rs.3000/- may not reflect the correct value. The Honorable Apex Court, in the judgment rendered in Syed Sadiq v. Divisional manager, United India Insurance Co. Ltd., reported in 2014 (1) TN MAC 459 (SC), took the monhly income of a vegetable vendor at Rs.6500/-, who got injured in an accident in the year 2008 and added 50% towards & Isquo;Future Prospects&rsqo; and determined the total monthly income at Rs.9750/-. Following the said judgment, this Court determines the monthly income of the deceased at Rs.6500/-.. "

In Tavati Srinivas vs. @ Srinu and another vs. N.Padmavathi (2015 (1) TANMAC 451) and Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., v. R.Kalavathi and others (215 (1) TANMAC 612 (Hyd.)), it is held that in the absence of evidence, the income can be fixed at Rs.6000/- and Rs.8000/- respectively.

Considering the avocation pleaded and no contra evidence had been let in on the part of the respondents about his age and previous health condition, in the light of the above, this Court is not able to find any infirmity in confirming such a finding.

6. A perusal of the testimony of PW1 and Ex.P1 to Ex.P7, copy of the accident registers clearly shows that he sustained laceration of 3x 2 x bone depth over inner part of right upper arm, pain and tenderness on the right shoulder and 6 x 6 c.m, contusion over right back, in which 1st is simple and 2nd and 3rd are grievous. Further, Ex.P8 Discharge Summary and Lab Reports reveal a contusion in the basal segment of right lung, partial collapse of the right lung and free air was seen in the right hemothorax, multiple displaced fractures are seen in the posterior and lateral aspects of right 5th 6th and 7th ribs. He took treatment at Government Hospital, Thanjavur upto 16.09.2014 and to prove the nature of injury, he has also produced Ex.P4-Disability Certificate and Ex.P5-X-ray Report, which is also supported by PW2-doctor T.Kanmani, Orthopedic Surgeon, Government Hospital, Ariyalur, who has deposed that his right 2 to 6 ribs were fractured, but 5th rib has not been properly joined; injury over right lung; he would find it difficult to breath, while walking and climbing steps and could not lift things, unable to breath over 20 second continuously, could not work as before. Considering the nature of the injuries, the Tribunal has accepted 38% disability based on the disability certificate marked as Ex.P4 and Rs.2,000/- has been awarded per percentage of disability and arrived at Rs.76,000/- towards permanent disability at 38% . This Court is not able to find any infirmity in awarding a sum of Rs.76,000/- towards permanent disability. The Tribunal has rightly fixed functional liability at 20% as the injured is a daily wager and his work cannot be run with the help of other persons. Therefore, considering the age of the injured, who was aged about 42 years at the time of accident, following the Susamma Thomas, Trilok Chandra and Charlie cases, by applying the correct multiplier '14', the loss of future earnings has been worked out to Rs.8,000/- x 12 x 14 x 20% = Rs.2,68,800/-. As the claimant was admitted in Meenakshi Hospital from 16.06.2014 to 23.06.2014 as inpatient and took treatment for the period of three months, he could have taken attenders help in the hospital. Therefore, the Tribunal has rightly awarded a sum of Rs.15,000/- towards attendants charges. Further, the claimant has visited hospitals on 15.06.2014, 16.06.2014, returned to home on 23.06.2014 and again visited the

hospital 30.06.2014, 17.07.2014 and 16.09.2014 and also it could be seen in Ex.P2 prescriptions and bills. Therefore, the Tribunal has rightly awarded a sum of Rs.10,000/- towards transportation expenses. In addition thereto, the Tribunal has awarded the amount under the other heads namely a sum of Rs.24,000/- towards loss of income for three months, Rs.15,000/- towards extra nourishment, Rs.1,000/- towards damages to clothes, Rs.52,000/- towards medical expenses, which are reasonable. Thus, it is seen that the Tribunal has awarded a total compensation of Rs.4,61,800/-, which seems to be reasonable, hence, this Court is inclined to confirm the same. Therefore, this Court finds no infirmity or error in the impugned award passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

7. Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant to move a petition before the learned Tribunal for withdrawing of the said amount.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate), Ariyalur.

+1 cc to Mr.D.Venkatachalam, advocate, sr.60363.

rsy(co)
krd 30/1

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