

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. NO.2632 OF 2015
and M.P. NO.1 of 2015

The Managing Director
Tamil Nadu State Transport
Corporation Kumbakonam Limited
Railway Station New Road,
Kumbakonam - 612 001.

.. Appellant/Respondent

- Vs -

M.Kanakasubramanian

.... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 05.06.2015 passed by the Motor Claims Tribunal (IV Court of Small Causes), Chennai, made in M.C.O.P.No.280 of 2010.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.M.Selvam

J U D G M E N T

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent/claimant.

2. The appellant/Transport Corporation has filed the appeal challenging the Award dated 05.06.2015 passed by the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai, made in M.C.O.P.No.280 of 2010.

3. It is a case of injury. On 07.01.2010 at about 3.00 hours the injured Kanakasubramanian was travelling in the State Transport Corporation bus bearing Registration No.TN 49 N 2001. It is stated that it was driven by its driver rashly and negligently, at Nangam Chavadi, Vaitheeswaran Koil P.S. Limit and hit against the stationed bus bearing Registration No.TN49-N 1885, as a result, the injured claimant and others sustained grievous injuries. Hence,

the claimant has filed claim petition claiming a sum of Rs.20,00,000/- as compensation. According to the claimant, he was working as V.A.O. Assistant and was earning a sum of Rs.7,500/- per month.

4. In support of the claim petition, the injured claimant examined himself as P.W.1; one Mr.T.Augustine was examined as P.W.2 and Dr.N.Saichandran was examined as P.W.3 and Exs.P-1 to P-15 were marked, the details of which are as follows:-

Ex.P-1	Copy of F.I.R.
Ex.P-2	Copy of accident register
Ex.P-3	OP treatment
Ex.P-4	Discharge slip
Ex.P-5	Wound certificate
Ex.P-6	Photographs
Ex.P-7	VAO certificate
Ex.P-8	Copy of identity card and pay certificate
Ex.P-9	Transport bills
Ex.P-10	Authorization letter of PW2
Ex.P-11	Discharge summary
Ex.P-12	Inpatient bills
Ex.P-13	Medical bills
Ex.P-14	Disability certificate issued by PW2
Ex.P15	X-ray film

5. On the side of the respondent, no witnesses were examined and no documents were marked.

6. The Tribunal based on the oral evidence of witnesses, the F.I.R. and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant-Transport Corporation to refute the evidence as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus, and therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimant. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of Future earning capacity	-	Rs.10,92,000/-
Pain and suffering	-	Rs. 1,50,000/-
Extra nourishment	-	Rs.2,00,000/-
Transport to Hospital	-	Rs.1,00,000/-
Damages to clothes	-	Rs. 3,000/-

Attender Charges	-	Rs. 75,000/-
Medical Expenses	-	Rs.2,18,000/-
Future Medical Expenses	-	Rs. 50,000/-
Loss of Amenities	-	Rs.1,00,000/-
Total Compensation	-	Rs.19,88,000/-

7. In all, the Tribunal awarded a compensation of Rs.19,88,000/= with interest at the rate of 7.5% from the date of filing of petition, viz., 27.10.2010 till date of realization. Aggrieved by the said award, the appellant - Transport Corporation is before this Court by filing this appeal.

8. Learned counsel appearing for the appellant-Transport Corporation submitted that the injured claimant is still continuing his work and hence, the Tribunal is error in awarding compensation towards loss of future earning capacity by adopting multiplier method. Per contra, it is submitted by the learned counsel for the claimant that the injured claimant has taken treatment for a period of one year and the Tribunal has not awarded any amount towards loss of income during the treatment period. Further, the amount awarded under other heads is also meagre, and therefore, no interference is called for with the well considered finding of the Tribunal.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record.

10. With regard to the contention of the learned counsel appearing for the appellant that loss of future earning capacity awarded by the Tribunal is not correct, it is seen that the Tribunal had adopted multiplier method in arriving at the loss of earning capacity. We find that the injured claimant is still continuing with his work and no materials have been placed with regard to the loss of earning capacity. Therefore, in the absence of any material, the amount awarded towards loss of future earning capacity is rejected. However, considering the nature of injury and treatment taken by the injured claimant for a substantial period, at best, a sum of Rs.3,000/- to be compensated for 1% disability. Hence, taking into consideration the disability at 70%, the loss of income for the period of treatment for 9 months is fixed at $\text{Rs.}3000 \times 70 = 2,10,000/-$. We find that the Tribunal has exorbitantly awarded on other heads also and hence, the same needs to be modified.

11. Accordingly, the compensation awarded by the Tribunal is modified as hereunder :-

	Compensation awarded by the Tribunal	Compensation awarded by this Court
Loss of Future earning capacity	Rs.10,92,000/- -	---
Pain and suffering	Rs. 1,50,000/-	Rs.1,50,000/-
Extra nourishment	Rs.2,00,000/-	Rs.50,000/-
Transport to Hospital	Rs.1,00,000/-	Rs.30,000/-
Damages to clothes	Rs. 3,000/-	Rs.3,000/-
Attender Charges	Rs. 75,000/-	Rs.30,000/-
Medical Expenses	Rs.2,18,000/-	Rs.2,18,000/-
Future Medical Expenses	Rs. 50,000/-	Rs.50,000/-
Loss of Amenities	Rs.1,00,000/-	Rs.1,00,000/-
Loss of income during the period of treatment	----	Rs.1,20,000/-
Disability at 70%	----	Rs.2,10,000/-
Total Compensation	Rs.19,88,000/-	Rs.9,61,000/-

The interest awarded by the Tribunal at 7.5% per annum is not in dispute and the same is confirmed.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above modification. Learned counsel appearing for the appellant submits that as per the order of this Court dated 30.11.2015 directing the appellant - Transport Corporation to deposit a sum of Rs.10.00 lakhs, the appellant deposited the same. The appellant is directed to deposit the balance amount, if any, within a period of four weeks from the date of receipt of a copy of this order. The claimant/respondent is permitted to withdraw the amount now ordered by this Court along with proportionate interest and costs. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

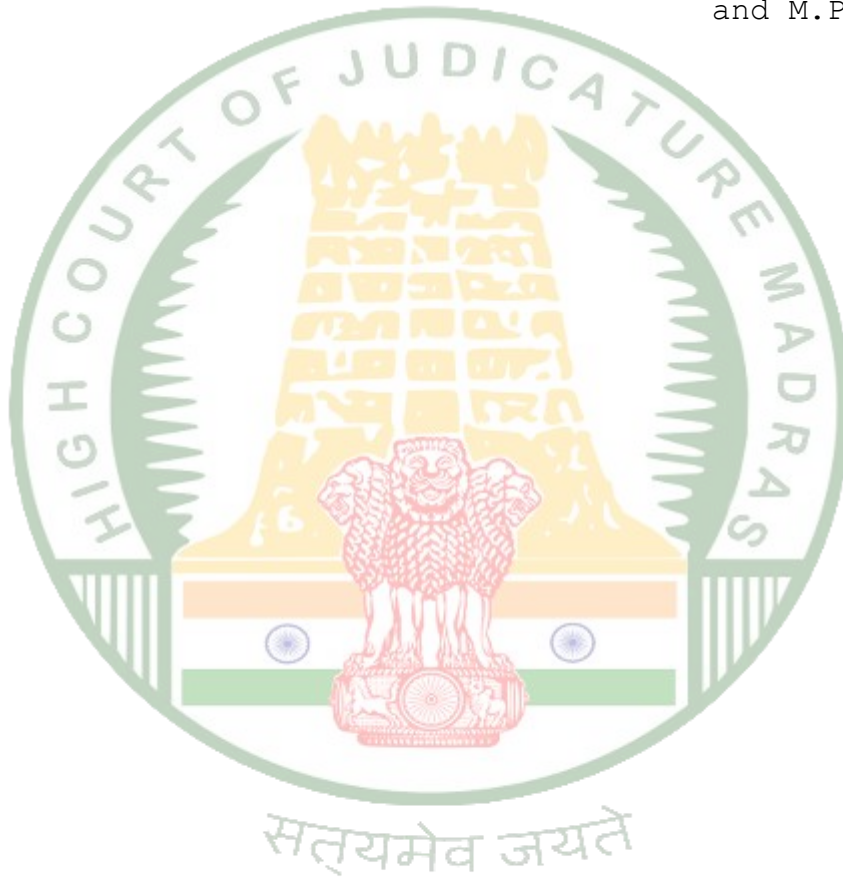
To

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

1 cc to Mr.D. Venkatachalam, Advocate, Sr. 17157
1 cc to Mr.S. Ravikumar, Advocate, Sr. 17124

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