

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. Nos.2458 & 2459 of 2016
C.M.P. Nos.17272 and 17273 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Periya Melakuparai,
Tiruchirapalli - 620 001.

.. Appellant in both appeals

Versus

Krishnasamy

.. Respondent in CMA. No.2458 of 2016

Mahalingam

.. Respondent in CMA. No.2459 of 2016

Prayer in both appeals: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 16.10.2015 made in M.C.O.P.Nos.503 & 1154/2014 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge), Namakkal.

For Appellant in both appeals : Mr.D.Venkatachalam

For Respondent in both appeals: Mr.Ma.P.Thangavel

COMMON JUDGMENT

The Managing Director, Tamil Nadu State Transport Corporation has brought these appeals challenging the impugned award dated 16.10.2015 made in M.C.O.P.Nos.503 & 1154/2014 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge), Namakkal, awarding a sum of Rs.3,09,900/- and Rs.6,29,900/- for the multiple injuries sustained by the claimants.

2.As both the appeals are arising out of the common award, they are taken up together for common disposal.

3.According to the claimants, on 25-01-2014 at about 9.20 p.m., when the claimant Krishnasamy was riding a Mahindra Odio Bike bearing Registration No.TN 30 AH 2237 and the other claimant Mahalingam was travelling as a pillion rider on Namakkal-Trichy Main Road, a bus bearing Registration No.TN 45 N 3440 belonging to the appellant Transport Corporation, which was driven by its driver, dashed against the above said vehicle. Due to the same, the claimants sustained grievous injuries. According to the claimants, the accident had happened due to the rash and negligent driving of the driver of the said bus.

4.Learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award, contended that the learned Tribunal ought not to have assessed the permanent disability of the claimants at 40% and 42%, which are on the higher side. He would further contend that the learned Tribunal has wrongly come to the conclusion that the accident had occurred due to the rash and negligent driving made by the driver of the said bus, based upon mere registering of F.I.R. against the driver of the bus, without even shifting the burden and fixing the contributory negligence on the claimants. Adding further he would submit that the disability sustained by the claimants would not affect their future earning capacity, as they are owner

and manager respectively of a Petrol Bunk and therefore, since they would not have any physical work, the income from the same would continue even after the accident. Learned counsel for the appellant would further contend that the learned Tribunal has failed to give any finding with regard to the functional disability. Therefore, the amount awarded by the learned Tribunal are excessive, exorbitant and also without any basis and justification and hence, the same need interference.

5. On the other hand, learned counsel appearing for the claimants/ respondents would submit that the Tribunal has come to the right conclusion and awarded a just, fair and reasonable compensation. Hence the impugned award passed by the learned Tribunal does not call for interference.

6. This Court is unable to find any merit on the contentions made by the learned counsel for the appellant for the following reasons:

When the learned Tribunal has given a clear finding that the driver of the bus belonging to the Transport Corporation is guilty of rash and negligent driving, considering Ex.P4/Motor Vehicle Inspector's Report which reveals that the accident had happened due to the rash and negligent driving of the driver of the bus, who was examined as R.W.1 and also considering Ex.P1/copy of the First Information Report, the contention made by the learned counsel for the appellant that the learned Tribunal merely relying on F.I.R. registered against the driver of the bus, has come to the conclusion that the accident had

occurred due to the rash and negligent driving made by the driver of the said bus, is totally misconceived.

CMA. No.2458 of 2016:

A perusal of the evidence deposited by P.W.1/Krishnasamy, shows that due to the said accident, his left leg toes got broken, right hand fingers got fractured, little finger of right hand got amputated and he has sustained multiple grievous injuries, for which he was immediately taken to Aravindh Hospital, Namakkal and for getting better treatment, he was subsequently taken to Srinidhi Hospital, Namakkal, where he took treatment as an in-patient for nearly one month in the above mentioned hospitals and he is still taking treatment as an outpatient.

Considering the above said injuries sustained by the claimant, which was supported by wound certificate, discharge summary, medical bills, respectively marked as Ex.P2, 6 to 9 and also considering the evidence adduced by the claimant that due to the accident, he has got fracture on his right hand little finger, 5th metacarpal bone got broken and he sustained multiple injuries all over the body and due to the same, he lost 10 degree movement of his right hand little finger and also he lost 5 degree movement of his leg fingers and he cannot stand, walk and unable to lift any weight and do any hard work and therefore, the Doctor, who was examined as P.W.3, has issued disability certificate certifying 40% permanent disability, the learned

Tribunal has fixed the permanent disability of the claimant at 40%, as per the ratio laid down by the Hon'ble Apex Court in the case of **G.Dhanasekar vs. M.D.Metropolitan Transport Corporation Ltd. Reported in 2014 (1) TN MAC 289 SC.**

Learned Tribunal, considering Ex.P3/wound certificate, which reveals that the age of the claimant was 62 years at the time of accident and considering the claim petition stating that the age of the claimant was 65 years, has fixed the age of the claimant as 65 years. As per the ratio laid down by this Court in the case of **Managing Director, Tamil Nadu State Transport Corporation Limited vs. Panchavarnam and another reported in 2015 (1) TN MAC 514** and considering his claim petition stating that he was an owner of the Petrol Bunk and earning a sum of Rs.15,000/- per month, it has fixed the notional income of the claimant at Rs.6,000/- per month, in the absence of proof to establish the income of the claimant. On this basis, the learned Tribunal has arrived at a sum of Rs.2,01,600/- ($6000 \times 12 \times 7 \times 40/100$) towards loss of income by applying the multiplier '7'.

Considering the medical expenses incurred by the claimant, which was marked as Ex.P8, a sum of Rs.38,340/- has been awarded towards medical expenses. With regard to various heads namely Transportation, Extra Nourishment, pain and sufferings, loss of amenities and attender charges, Rs.5,000/-, Rs.5,000/-, Rs.25,000/-, Rs.25,000 and Rs.10,000/- respectively

have been awarded. Finally a sum of Rs.3,09,940/- has been awarded towards total compensation.

CMA. No.2459 of 2016:

A perusal of the evidence deposited by P.W.2/Mahalingam, shows that due to the said accident, his both bones got fractured on below right knee and he got multiple grievous injuries, for which he was immediately taken to Aravindh Hospital, Namakkal and for getting better treatment, he was subsequently taken to Srinidhi Hospital, Namakkal,

Considering the above said injuries sustained by the claimant, which was supported by a copy of the Accident Register, discharge summary, medical bills, prescription sheets for medicine, wound certificate, respectively marked as Exs.P11 to 16 and also considering the evidence adduced by the claimant that due to the accident, he has got fracture on his below right knee, sustained multiple injuries all over the body, fixed with the screw and plate in his right leg and he lost 15 degree movement of his right knees and he cannot stand, sit and unable to climb the steps and lift any weight and could not do any usual activity as he was doing before the accident and therefore, the Doctor, who was examined as P.W.3, has issued disability certificate certifying 42% permanent disability, the learned Tribunal has fixed the permanent disability of the claimant at 42%, as per the ratio laid down by the Hon'ble Apex Court in the case of **G.Dhanasekar vs.**

M.D.Metropolitan Transport Corporation Ltd. Reported in 2014 (1) TN MAC 289 SC.

Learned Tribunal, considering Ex.P16/wound certificate, which reveals that the age of the claimant was 40 years at the time of accident, has fixed the age of the claimant as 40 years. As per the ratio laid down by this Court in the case of **Managing Director, Tamil Nadu State Transport Corporation Limited vs. Panchavarnam and another reported in 2015 (1) TN MAC 514** and considering his claim petition stating that he was working in the Petrol Bunk and earning a sum of Rs.7,500/- per month, it has fixed the notional income of the claimant at Rs.6,500/- per month, in the absence of proof to establish the income. On this basis, the learned Tribunal has arrived at a sum of Rs.4,91,400/- ($6500 \times 12 \times 15 \times 42/100$) towards loss of income by applying the multiplier '15'.

Considering the medical expenses incurred by the claimant, which was marked as Ex.P14, a sum of Rs.68,471/- has been awarded towards medical expenses. With regard to various heads namely Transportation, Extra Nourishment, pain and sufferings, loss of amenities and attender charges, Rs.5,000/-, Rs.5,000/-, Rs.25,000/-, Rs.25,000 and Rs.10,000/- respectively have been awarded. Finally a sum of Rs.6,29,900/- has been awarded towards total compensation.

T.RAJA, J.

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7. Therefore, this Court is not inclined to interfere with the quantum of compensation awarded by the learned Tribunal. Accordingly, the appeals fail and the same are dismissed. No costs. Consequently, connected C.M.Ps are also dismissed.

8. 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, failing which the interest payable would become 12% for the delayed period. On such deposit, it is for the claimants to move a petition before the learned Tribunal for withdrawing of the said amount.

01.11.2016

Index : Yes / No
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To
1. The Motor Accidents Claims Tribunal,
(Additional District Judge), Namakkal.

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

C.M.A. Nos.2458 & 2459 of 2016

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