

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2549 of 2016
& C.M.P.No.18184 of 2016

The Branch Manager,
Tamil Nadu State Transport Corporation,
Kumbakonam Division-I,
Railway Station New Road,
Kumbakonam. .. Appellant/ 3rd Respondent

Versus

1.A.Anandhan ...1st Respondent/ Petitioner
2.K.Sriram ...2nd Respondent / 1st Respondent
3.The Oriental Insurance Company Limited,
Subagovindham Building,
Imperial Road,
Cuddalore-02. ...3rd Respondent/ 2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.03.2016 made in M.A.C.T.O.P.468 of 2010 on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The Managing Director of Tamil Nadu State Transport Corporation has filed the present Civil Miscellaneous Appeal, challenging the correctness of the impugned award dated 30.03.2016 made in M.A.C.T.O.P.No.468/2010 on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Cuddalore.

2.Learned counsel appearing for the appellant would submit that the the injured was travelling in the second respondent's bus bearing Registration No.TN-31-AA-2746 at Kadampuliur opposite to Chemplast, the vehicle belonging to the appellant/transport Corporation said to have hit behind the vehicle in which the injured was travelling. As a result, the injured sustained grievous injuries and multiple fractures all

over the body. Although the Tribunal has accepted the evidence of the injured/PW1 along with the FIR on the file of Kadampuliyur Police Station against the driver of the bus belonging to the appellant /Transport Corporation herein for the offence under Sections 279 and 338 of IPC, the Tribunal has adopted the multiplier method instead of applying the percentage method and resultantly, the quantum of compensation was unreasonably hiked. Therefore, the impugned award of Rs.3,13,000/- with interest at 7.5% p.a. passed by the learned Tribunal is liable to be interfered.

3.Adding further, he would further submit that the injured immediately after the accident taken, has taken treatment in Government Hospital, Panruti and then transferred to Government Hospital, Cuddalore for advance treatment. The learned Tribunal ought to have concluded that the injuries sustained by the injured are not that much serious, while so, the calculation of applying of multiplier method the reason is on is unwarranted that on 20.10.2009 at about 6.00 a.m., when the injured had travelled in second respondent's vehicle bearing Registration No. Tn-1-AA-2746 from north to south direction at Kadampuliyur opposite to Chemplast, the bus belonging to the appellant/Transport Corporation bearing Registration No.TN-49-N-1318 hit behind the vehicle in which the injured was travelling. In view of the accident, the injured sustained grievous injuries and multiple fractures all over the body and immediately after the accident, the injured was admitted in the Government Hospital, Panruti and then transferred to Government Hospital, Cuddalore for advance treatment. Subsequently, after registering the FIR against the driver of the offending vehicle belonging to the appellant/Transport Corporation on the file of Kadampuliyur Police Station in Cr.No. 342 of 2009 for the offence under Section 279 and 338 of IPC has filed a claim petition on 30.12.2009.

4.Learned counsel for the appellant would submit that immediately after the accident taken place on 20.10.2009, he was admitted in Government Hospital for a period of three days is totally unacceptable. Moreover he rushed to nearby Hospital, Panruti for first aid. He was further shifted to Government Hospital, Cuddalore for advance treatment and that has been properly brought before the Tribunal by the injured/Claimant. Admittedly, the injured has taken treatment as inpatient for a period of three days i.e. On 20.10.2009 to 23.10.2009. In view of the accident, he has sustained multiple injuries and fractures and he is taking continuous treatment.

5.In my considered opinion, the application of the multiplier method is fully justifiable for the reason that once the injured had sustained grievous injuries and multiple fractures and even now also taking continuous treatment for

which X-ray also shows that his clavicle bone is fully not united and there is malunion which has not returned back to the original position. As a result, he cannot lift any weight. moreover he is not able to do his work as before. Therefore, the disability was assessed by PW2 at 40%. But the Tribunal has fixed 35% disability and applied the multiplier method. The Tribunal has fixed only a sum of Rs.3,300/- as notional monthly income which is also very low. The socio economic condition forces any individual to earn at the rate of Rs.200/- per day for his livelihood, as per the ratio laid down by the Hon'ble Apex Court in the case of Syed Sadiq and others vs. Divisional Manager United India Insurance Co. Ltd. reported in 2014 ACJ 627 holding that even vegetable vendor would earn a monthly income of Rs.6,500/-, a sum of Rs.6,500/- should have been fixed as a notional monthly income. But in the instant case, fixing a sum of Rs.3,300/- as notional income and fixing 35% disability applying the multiplier '15' and arriving at Rs.2,08,000/- towards permanent disability cannot be found fault with. With regard to pain and suffering as mentioned above, when the injured has taken treatment both in Government Hospital, Panruti and Government Hospital, Cuddalore, he must have suffered all these days unbearable pain, hence, fixing Rs.40,000/- each towards pain and suffering and loss of amenities cannot be found fault with. More over, the Tribunal has rightly awarded a sum of Rs.5,000/- each towards extra nourishment, attendant charges and transport expenses and a sum of Rs.9,000/- towards loss of income during treatment and a sum of Rs.1,000/- towards damages for clothings and the same is hereby confirmed.

6. Therefore, this Court is not able to find any merit in this appeal. Accordingly the award is confirmed and the appeal is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

7. Since the learned counsel for the appellant submitted that the appellant had deposited a sum of Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of six 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 Tribunal for withdrawing the said amount.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The I Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
Cuddalore.

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

1 cc to Mr. D. Venkatachalam, Advocate, Sr. 66927

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