

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2553 of 2016 &
C.M.P.No.18192 of 2016

The Managing Director,
Tamil Nadu State Transportation Corporation,
Kumbakonam Limited,
Railway Station New Road,
Kumbakonam.

... Appellant

Versus

V.Adhikesavan

... Respondent

Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.04.2016 made in M.C.O.P.No.1885/2014 on the file of the Motor Accident Claims Tribunal, (1st Additional Subordinate Judge), Cuddalore.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The Managing Director, Tamil Nadu State Transport Corporation has brought this appeal, challenging the correctness of the impugned award dated 13.04.2016 made in M.C.O.P. No.1885/2014 on the file of the Motor Accidents Claims Tribunal, (I Additional Subordinate Judge), Cuddalore, awarding a sum of Rs.3,98,265/-/- as against the claim of Rs.10,00,000/-.

2.It is the case of the claimant that on 27.03.2014 at about 16.00 hours, while the respondent/claimant who was a pillion rider of Hero Honda motor cycle bearing Registration No.TN-31-BZ-5815 rode by D.Elango in a moderate speed, from north to south, a bus bearing Registration No.TN-68-N-0272 driven by its driver in a rash and negligent manner came from opposite direction, dashed against the vehicle.As a result,the claimant sustained fracture and multiple grievous injuries. According to the claimant,the accident had happened due to the rash and negligent driving of the driver of the above said bus.

3.Learned counsel appearing for the appellant would submit that the learned Tribunal ought not to have taken the permanent disability of the claimant at 20%, which is on the higher side. He would further submit that the learned Tribunal ought not to have fixed the monthly income of the claimant at Rs.6,500/- which is on the higher side. Adding further, he

would submit that the amounts awarded under the heads 'pain and sufferings' and 'loss of amenities and enjoyment in life' are on the higher side. He would further submit that the Tribunal has erred in awarding a sum of Rs.52,565/- towards medical expenses, which has not been corroborated by the bills under Ex.P13 series. Therefore, the impugned award passed by the learned Tribunal is liable to be interfered with.

4. But this Court is not able to find any merit in the submissions made by the learned counsel for the appellant. The reason is that when the claimant was travelling as pillion rider, the driver of the appellant/Transport Corporation, driven the bus in a rash and negligent manner and caused the accident. As a result, the claimant sustained multiple injuries, for which, he was rushed to Government Hospital, Pantudi on 27.03.2014 and after taking first aid, he was shifted to Government Headquarters Hospital, Cuddalore wherein the injured was admitted as in-patient from 27.03.2014 to 31.03.2014 and thereafter, the injured was admitted as in-patient in Lakshmi Hospital, Cuddalore from 31.03.2014 to 04.04.2014 wherein he has undergone surgery in his right knee and doctors fixed plates and screws and thereafter, he has been taking treatment as out-patient in Vallivilas Hospital, Cuddalore.

5. A perusal of Ex.P11/Discharge summary issued by Government Hospital, Cuddalore, clearly shows that the claimant was admitted on 27.03.2014 and discharged on 31.03.2014. In view of grievous injuries sustained by the injured, the doctor, who was examined as PW2, has deposed that after the accident, the injured was suffering giddiness in view of the head injuries and coupled with the fracture in right knee, he is unable to sit while bending his knee. Although the doctor has certified 40% disability, the learned Tribunal, after analysing the evidence adduced by both sides and going through the wound certificate marked as Ex.P14-dated 10.02.2016, issued by PW2, discharge summary marked as Ex.P9, C.T.Scan marked as Ex.P10 respectively, has fixed only 20% disability. After fixing 20% disability, the Tribunal has applied multiplier method and awarded the compensation towards loss of earning capacity. In regard to monthly income of the injured, the Tribunal has fixed a sum of Rs.6,500/- as notional monthly income, which is in tune with 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, wherein, the Hon'ble Apex Court, even in the case of vegetable vendor, in the absence of any evidence, fixed notional monthly income at Rs.6,500/- per month at the rate of Rs.200/- per day. In regard to multiplier, as the injured was aged about 29 years, he had fallen in the group 25-30, for which the correct multiplier of '17' has been rightly adopted and thereafter, it has rightly awarded a sum of Rs.2,65,200/- towards permanent disability. Thus, the same is hereby confirmed.

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6. As I mentioned above, immediately after the accident, the claimant had taken treatment in three hospitals, i.e. Government Hospital, Panruti on 27.03.2016 for first-aid and

thereafter, he was shifted to Government Headquarters Hospital, Cuddalore wherein he was admitted as in-patient from 27.03.2014 to 31.03.2014 and even after discharge from the hospital, it has been proved that he was admitted as in-patient in Lakshmi Hospital from 31.03.2014 to 04.04.2014 and on 31.03.2014, he had undergone surgery in his right knee and was also fixed with plate and screws and thereafter, he has taken treatment as out-patient in Valli Vilas Hospital, at Cuddalore. Considering such admitted treatment taken by the claimant, the Tribunal has fixed a sum of Rs.25,000/- towards pain and suffering and Rs.20,000/- towards amenities and enjoyment in life and a sum of Rs.19,500/- towards loss of earnings during treatment period, which, in my view cannot be termed as exorbitant, because, during the treatment days, he would not have earned anything. Therefore, the contention made by the learned counsel for the appellant that the amount awarded under the head 'pain and sufferings' and 'loss of amenities and enjoyment in life are on the higher side, is unreasonable. With regard to extra nourishment, attendant charges and transport expenses, the Tribunal has awarded a sum of Rs.5,000/- each and a sum of Rs.1,000/- towards damage to clothings are very reasonable and the same are hereby confirmed. Therefore, this Court is not inclined to interfere with the award passed by the learned Tribunal. Accordingly, the Civil Miscellaneous appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

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 the said amount.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS IV)

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Sub Assistant Registrar

To

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

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

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.66929

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C.M.P.No.18192 of 2016

KSJ (CO)
CA (07/02/2017)