

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.60 of 2016

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Kumbakonam Division.

.. Appellant

Versus

Sanjay Gandhi

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 18.03.2015 made in M.C.O.P.No.16/2012 on the file of the Motor Accidents Claims Tribunal, (II Additional Subordinate Judge), Cuddalore.

For Appellant : Mr.D.Venkatachalam

For respondent : Mr.R.Bharath Kumar

J U D G M E N T

This Civil Miscellaneous Appeal, by the appellant/Transport Corporation, is directed against the correctness of the impugned award dated 18.03.2015 made in M.C.O.P.No.16/2012 on the file of the Motor Accidents Claims Tribunal, (II Additional Subordinate Judge), Cuddalore, awarding a sum of Rs.4,28,000/- with 7.5% interest per annum as against the claim of Rs.5,00,000/- for the multiple injuries sustained by the claimant/respondent.

2. According to the claimant, on 01.12.2011 at about 14.00 hours, when the claimant was riding his motor bike bearing registration No.TN-20-AS-3274 Hero Honda Splendor Plus along with his friend one Veerapandiyan from Janatha Tyre Mart to his house at Chidambaram towards South to North on the Cuddalore to Chidambaram Main Road, near Bysal Mahal at Chidambaram, TNSTC bus bearing Registration No.TN-68-N-0097, being driven by its

driver in a rash and negligent manner, dashed behind the claimant and caused the accident. Due to the accident, the claimant and his friend well thrown out of the bike and they fell on the road and sustained grievous injuries all over the body and head. Immediately after the accident, the claimant and the pillion rider were admitted in the Chidambaram Raja Muthaiah Medical College Hospital and took treatment from 01.12.2011 to 06.12.2011 and the claimant also underwent treatment in various private hospitals. According to the claimant, the accident occurred due to the rash and negligent driving of the driver of the bus. Therefore, a case was registered against the driver of the bus under Sections 279 and 337 of IPC in Crime No.1103 of 2011 on the file of SHO of Chidambaram Town Police Station.

3.After considering the oral and documentary evidence, the Tribunal held that the accident occurred only due to the rash and negligent driving of the driver of the bus and awarded a sum of Rs.4,28,000/- as compensation payable to the claimant with interest at the rate of 7.5%. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4.Heard Mr.D.Venkatachalam, learned counsel for the appellant and Mr.R.Bharath Kumar, learned counsel appearing for the respondent and perused the document on record. On the side of the claimant, P.Ws 1 and 2 were examined and documents Exs.P1 to P10 were marked. On the side of appellant/Transport Corporation, no witnesses were examined and no documents were marked.

5.Learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award passed by the Tribunal, has contended before this Court that the Tribunal, only analysing the mere registering of F.I.R. against the driver of the bus, has wrongly come to the conclusion that the claimant has satisfactorily proved the rash and negligent driving of the driver, without even shifting the burden on the claimant. He would further submit that the Tribunal ought not to have accepted the disability certificate showing that the claimant had suffered 40% disability, which is on the higher side, as there was only minor injuries sustained by the claimant and that the same would not affect his future earning capacity. Therefore, the entire findings and conclusions reached by the Tribunal in respect of manner of accident are liable to be interfered with.

6.This Court is not able to find any merits in the contentions made by the learned counsel for the appellant. The

reason is that immediately after the accident, the claimant was admitted in the Chidambaram Raja Muthaiah Medical College Hospital and took treatment from 01.12.2001 to 06.12.2011 and thereafter the claimant underwent treatment in various private hospitals. The Tribunal, after considering the disability certificate, marked as Ex.P10, issued by P.W.2/Doctor has arrived at the following conclusion:

"P.W.2, the Doctor who examined the petitioner took Ex.P9, x-ray to assess the nature and percentage of disability caused to the petitioner, categorically deposed that due to the accident, the petitioner had suffered fracture shaft of right radius middle $1/3^{\text{rd}}$ with distal radio ulnar joint disruption and that after treatment there is mal-union of the fractured bone. P.W.2 further deposed that the movement of the right hand of the petitioner is restricted with pain and that the petitioner is not able to do hard work and having difficulty to carry out routine day to day activities and that the percentage of disability caused to the petitioner is 40%. The disability issued by P.W.2 was exhibited as P.10."

7.Thus, the Tribunal, accepting the disability certificate of P.W.2/Doctor, fixed 40% disability and considering the fact that the claimant was a painter at the time of accident, has rightly fixed the notional monthly income of the claimant at Rs.5,000/- and assessed the future prospectus as '50%' (Rs.2,500/-) of the salary last drawn. Therefore, the income of the claimant is assessed at Rs.7,500/- per month. The Tribunal, calculating his annual income, arrived at a sum of Rs.60,000/-, by deducting $1/3^{\text{rd}}$ amount towards his personal expenses. ($7500 \times 12 = 90,000/-$ and $1/3^{\text{rd}}$ towards self expenses = Rs.30,000/- i.e. $90,000 - 30,000 = \text{Rs.}60,000/-$). Considering the age of the claimant, by applying multiplier at 15 and considering the 40% disability certificate, issued by P.W.2/Doctor, arrived at a sum of Rs.3,60,000/- towards loss of earning capacity ($60,000 \times 40/100 \times 15$) and this Court is inclined to confirm the same and the same is confirmed. Similarly, the compensation awarded by the Tribunal under other heads are also confirmed, since the same seem to be reasonable. As this Court is not inclined to make reduction on the other heads awarded by the Tribunal and finds no error or infirmity in the impugned award passed by the Tribunal, the impugned award passed by the Tribunal is confirmed.

8.Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected C.M.P. is closed.

9.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 Tribunal for withdrawing the said amount.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.D.Venkatachalam, Advocate SR.2284

C.M.A. No.60 of 2016

lrs (CO)
srg (31/05/2016)

सत्यमेव जयते

WEB COPY