

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.467 of 2011
&
C.M.P.No.8755 of 2016

G.Bhaskar

... Appellant

Vs.

The Metropolitan Transport Corporation Ltd.,
rep. By its Managing Director

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 09.12.2009 and made in M.C.O.P.No.4796 of 2005 on the file of the Motor Accidents Claims Tribunal [Fast Track Court V (Additional District Judge)], Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondent : Mr.K.S.Suresh

JUDGMENT

Having been not satisfied with the award of the Tribunal dated 09.12.2009 and made in the claim petition in M.C.O.P.No.4796 of 2005 on the file of the Motor Accident Claims Tribunal (Fast Track Court V), Chennai, the claimant has approached this Court with this appeal under Section 173 of the Motor Vehicles Act, 1988.

2. As it is revealed from the records that on 15.10.2005, when the appellant/claimant, at about 01.00pm was proceeding in his motorcycle bearing Registration No.TN20-Y-8077 at Kamaraj Salai, K.K. Nagar, a passenger bus bearing Registration No.TN01-N-2534 had dashed against him. On account of this accident, he had sustained the following injuries:

- i) Fracture over his right leg;
- ii) Fracture over his right pelvis; and
- iii) Multiple injuries all over his body.

He, therefore, claiming totally a sum of Rs.3,00,000/- had moved the above said claims Tribunal with a claim petition in M.C.O.P.No.4796 of 2005.

3. The respondent Transport Corporation had contested the claim on the ground that when the bus was proceeding near St. Mathew Church the appellant /claimant was coming from the opposite direction in his motorcycle bearing Registration No.TN20-Y-8077 coupled with hectic speed on the wrong side and on account of his rashness, he had invited the accident by allowing his vehicle to hit against the right side body of the bus. According to the respondent Transport Corporation, the driver of the bus was not at fault. However, the Tribunal, based on the evidences available on record, had proceeded to award a sum of Rs.70,000/- under the following heads:

Towards loss of income	:	Rs. 12,000.00
Transportation	:	Rs. 2,000.00
Extra nourishment	:	Rs. 3,000.00
Medical Expenses	:	Rs. 3,000.00
Pain and Suffering	:	Rs. 10,000.00
For permanent disability at 55%:		Rs. 40,000.00
		Rs. 70,000.00

4. On the other hand, the learned counsel appearing for the respondent Transport Corporation has canvassed that the award of the Tribunal to the extent of 70% was very reasonable and it did not require any modification or change as the monthly income of the deceased was assessed at Rs.3000/- per mensem by the Tribunal. Insofar as this claim petition is concerned, the appellant, according to him, was aged about 25 years at the time of occurrence. The Tribunal, based on the evidence of PW1 and RW1 and other materials had concluded that while overtaking a car, the bus had dashed against the motorcycle driven by the claimant and therefore, the Tribunal had fastened the negligence on the part of the driver of the bus. The Tribunal had also found that since the occurrence was taken place due to the rash and negligence driving of the driver of the bus, the respondent Transport Corporation is vicariously liable to compensate the loss suffered by the claimant.

5. It is also revealed, that soon after the accident, the claimant was taken to Government Hospital at Royapettah and according to the claimant, he had sustained two fractures over his right leg and right side hip. Apart from this, he had also

sustained bleeding injuries all over his body. From the award of the Tribunal, this Court is able to understand that the claimant was treated in the Government Royapettah Hospital as an inpatient for about 23 days from 15.10.2005 to 08.11.2005 and while he was on treatment, he had undergone a surgery in respect of his pelvis fracture. From the evidence of PW1, it is revealed that even after his discharge from the hospital, he had been to puttur and applied bandages over the fracture site and towards the medical treatment at Puttur, he had spent more than Rs.40,000/- and for transportation he had spent more than Rs.10,000/-. Therefore, he had claimed totally a sum of Rs.3,00,000/-. Dr.Saichandran, on examination of claimant, had found that he was walking with limping and there was shortening of leg. On account of this reason his right leg was found bent to an extent of two inch and therefore he had assessed the disability at 55%.

6. Mr.T.G.Balachandran, learned counsel appearing for the claimant in order to support his contention has placed reliance upon the following two decisions:

1. B.Kothandapani Vs. Tamil Nadu State Transport Corporation Ltd., reported in 2011 (2) TN MAC 62 (SC);
2. Syed Sadiq etc., Vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TNMAC 459 (SC);
3. The Managing Director, Tamil Nadu State Transport Corporation Ltd., Vs.Valliammal and another reported in 2011 (1) TNMAC 793; and
4. Munna Lal Jain and Another Vs. Vipin Kumar Sharma and Others reported in (2015) 6 SCC 347;

7. In B.Kothandapani's case cited first supra, as per Exs.P9 and P10 (Disability Certificates issued by two doctors) the claimant's disability was assessed at 90%. However, the Tribunal had fixed the liability at 85% and awarded Rs.1,50,000/- towards the disability. In such circumstance, it was held by the Division Bench of the Apex Court that the Tribunal was justified in granting Rs.1,50,000/- towards permanent disability.

8. In Syed Sadiq's case, cited second supra, the claimant had undergone amputation of his right leg and injuries to the lower end of right femur and left upper arm. The disability certified by the doctor was at 24% in respect of upper limb and 85% to lower limb. However, the Tribunal had fixed the disability at 30% in respect of whole body. On appeal, the High Court had fixed the disability at 65%, but, without assigning any proper reason.

9. The injured was a vegetable vendor in the above cited case, but his occupation was not confined in selling vegetables from a particular location, but in procuring vegetables from wholesale market or farmers, which require 100% mobility. It is held by Division Bench of the Apex Court in manual labour cases that loss of limb is equivalent to loss of livelihood and considering the fact that the claimant is still capable of doing vegetable vending once he is brought to market place, the Apex Court has determined the disability at 85%. His monthly income was also fixed at Rs.9,750/-.

10. In the case of Managing Director, Tamil Nadu State Transport Corporation Ltd., cited third supra, the notional income of the deceased was determined at Rs.4500/- considering the rise in price and cost of living prevailing in the year 2002.

11. In Munna Lal Jain case cited fourth supra, the deceased was aged about 30 years and was employed as Pandit and remained as Bachelor. The Tribunal had awarded Rs.6,59,000/-, but the High Court had enhanced the award after fixing his monthly income at Rs.12,000/- adding 30% towards future prospectus and thereafter deducted 50% towards personal expenses and by applying the multiplier of 13, the compensation was determined at Rs.12,61,700/-.

12. On coming to the case on hand, the appellant/claimant was working as a Carpenter and according to him, he had earned a sum of Rs.250/- per day and Rs.7,000/- per mensem. It is to be noted that the accident was taken place in the year 2005. Therefore, the monthly income determined by the Tribunal at the rate of Rs.3000/- is very much on the lower side as argued by the learned counsel for the appellant and since there is no contrary evidence on the part of the respondent Transport corporation, the monthly income of the injured claimant as he was working as a Carpenter can be fixed at Rs.4500/- as per the wages prevailing during the year 2005. The Tribunal, in Paragraph 12 of its award, has observed that the petitioner/claimant was as a Carpenter and determined his income at Rs.3,000/-. Therefore, on considering the fact that the injury sustained by him had made him to stay away from the work for about four months, the loss of income was determined by the Tribunal at Rs.12,000/- (Rs.3000/- x 4 months). This Court also finds that the monthly income determined by the Tribunal is very much low and therefore in the interest of justice it may be fair to fix his monthly income at Rs.4500/-. Accordingly, the loss of monthly income could be determined at Rs.18,000/- (Rs.4500/- x 4).

13. PW2 had examined the claimant clinically and assessed his disability at 55%. It is a common judicial parlance that 5% or 10% of disability may differ from doctors to doctors. In this case, out of 55%, the disability could be assessed at 50%. Therefore, the compensation under the head of permanent disability can be determined at Rs.1,00,000/- (Rs.2,000/- per percentage of disability).

14. As rightly argued by Mr.T.G.Balachandran, the award passed by the Tribunal under other heads also seems to be on the lower side and therefore, they are enhanced as under:-

Since the claimant had claimed that he was taking treatment at Puttur and applied bandages over the fracture site and spent a sum of Rs.40,000/- towards the medical expenses and also considering the fact that he had undergone treatment at Government Royapettah Hospital for a period of 23 days, this Court finds that he is entitled to get Rs.15,000/- towards medical expenses. The Tribunal has awarded a sum of Rs.2,000/- under the head of transportation and a sum of Rs.3,000/- under the head of extra nourishment. Considering the facts and circumstances of the case, this Court is of view that a sum of Rs.5,000/- each could be awarded under the heads of transportation and extra nourishment. A sum of Rs.10,000/- awarded by the Tribunal under the head of pain and suffering could be maintained. In total, the compensation awarded by the Tribunal at Rs.70,000/- is hereby enhanced to Rs.1,53,000/-.

Keeping in view of the above fact, this Civil Miscellaneous Appeal is allowed and the amount of Rs.70,000/- awarded by the Tribunal is hereby enhanced to Rs.1,53,000/-. The respondent Transport Corporation is directed to deposit this amount to the credit of the claim petition in M.C.O.P.No.4796 of 2005 with 7.5% interest from the date of claim petition till the date of realization, less the amount already deposited, if any within a period of four weeks from the date of receipt of a copy of this order. On such deposit being, made the appellant / claimant is permitted to withdraw the entire award amount along with the accrued interest and cost without actually filing any formal application seeking leave. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

gpa

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal
[Fast Track Court V (Additional District Judge)]
Chennai

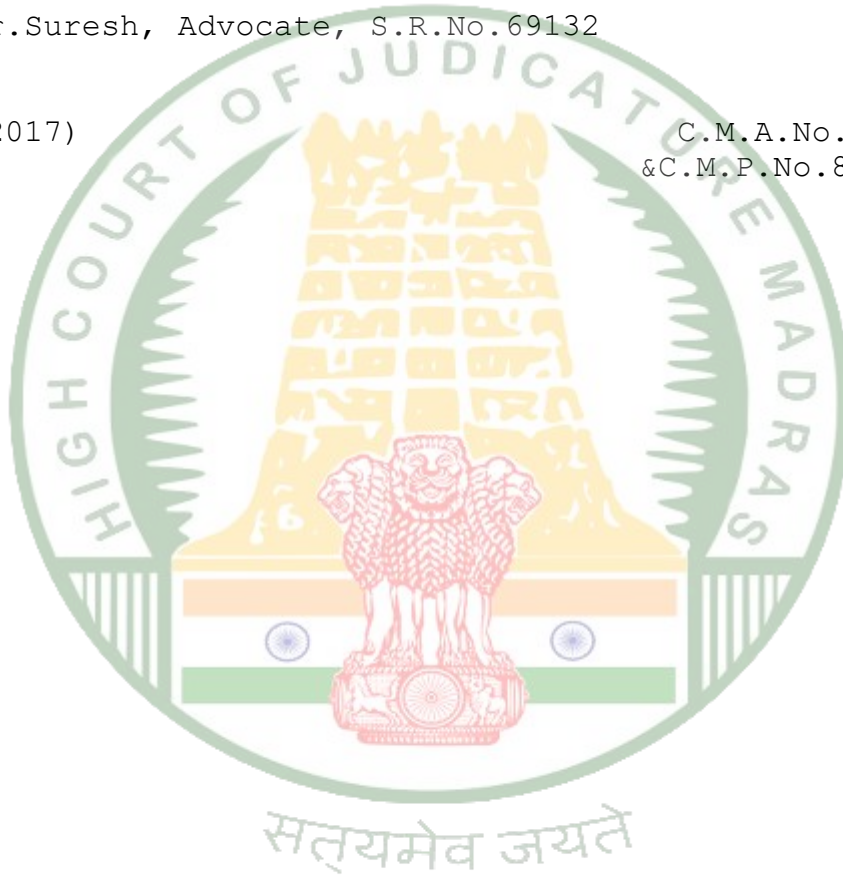
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The Section Officer,
V.R. Section, High Court, Madras.

+lcc to Mr.Suresh, Advocate, S.R.No.69132

SVJ(CO)
RS(31/01/2017)

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