

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.280 of 2014
and C.M.A.No.3240 of 2013
and connected MP.

C.M.A.No.280 of 2014:-

The Managing Director
Tamil Nadu State Transport
Corporation (Villupuram) Limited
No.3/137, Salamedu
Vazhuthareddy
Villupuram-605 602

... Appellant/Respondent

vs.

S.Alagarsamy

... Respondent/Petitioner

C.M.A.No.3240 of 2013:-

S.Alagarsamy

...Appellant/Petitioner

Vs

Tamil Nadu State Transport Corporation
Ltd., rep. By its Managing Director
Villupuram

...Respondent/Respondent.

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.08.2013 made in M.C.O.P.No.3892 of 2011 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant/Transport Corporation : Mr.K.J.Sivakumar

For Respondent/claimant : Ms.P.T.Salim Fathima
for Mr.M.Swamikannu.

COMMON JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

The Tamil Nadu State Transport Corporation has filed C.M.A.No.280 of 2014 challenging the quantum of compensation awarded by the Tribunal while the claimant has filed

C.M.A.No.3240 of 2013 seeking enhancement of the compensation made in M.C.O.P.No.3892 of 2011, dated 30.08.2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. It is a case of injury. On 19.08.2011 at about 08.45 hours, while the claimant/Alagarsamy was riding his Motor Cycle TN 55 R 4060 from south to north near Chennai-Madurai National Highway junction at Kuruchipatti cut road, the bus belonging to the appellant/ Transport Corporation bearing Reg.No.TN 32 N 3555 driven in a rash and negligent manner, hit the claimant from behind while taking a right turn at the cut road without any indication, due to which, he sustained multiple fractures and injuries. The claimant filed a claim petition in M.C.O.P.No.3892 of 2011 seeking compensation of Rs.46,00,000/-.

3. In support of the claim, the injured was examined as P.W.1 and the doctor who treated him was examined as P.W.2 and Exhibits P.1 to P.14 were filed. On behalf of the Transport Corporation, while R.W.1./Venkatesan, driver of the bus was examined, however no document was marked before the Tribunal.

4. The Tribunal, after taking note of the oral evidence of P.W.1, R.W.1 and Exhibits P.1, P.2, held that due to the rash and negligent driving by the driver of the TNSTC bus, the accident occurred and consequently, fixed the liability on the Transport Corporation.

5. Before the Tribunal, P.W.2/doctor, in his evidence stated that the injured claimant suffered the following injuries:-

"Sustained major crush and degloving injury in left hand elbow leading to loss of bone in elbow, upper arm and lower arm near elbow, complete loss of muscles and skin, external fixation done, multiple fracture and degloving injury in left hand palm and fingers especially little and ring finger and other multiple injuries."

The Tribunal also found that the claimant was treated as inpatient from 19.08.2011 to 30.08.2011 and also treated as out-patient at K.M.C.Speciality Hospital, Trichy.

6. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of earning	Rs. 60,000/-
2	Transport to Hospital	Rs. 5,000/-
3	Extra Nourishment	Rs. 5,000/-
4	Damage to clothing and articles	Rs. 1,000/-
5	Medical expenses	Rs.1,32,000/-
6	Attender charges	Rs. 7,000/-
7	Compensation for loss of amenities	Rs. 10,000/-
8	Pain and suffering	Rs. 50,000/-
9	Compensation for continuing permanent disability	Rs. 5,10,000/-
	Total	Rs.7,80,000/-

7. Insofar as the issue regarding negligence, the learned counsel for the Transport Corporation has no serious objection, hence, the same is confirmed.

8. The learned counsel for the injured claimant submitted that the doctor has assessed the disability of the injured claimant at 50%, however, the Tribunal has taken only 25% and adopted multiplier 17. She also argued that towards loss of earning, pain and suffering, meagre amounts have been awarded by the Tribunal and sought for enhancement of compensation.

9. On the other hand, the learned counsel appearing for the appellant/transport corporation contended that the compensation awarded for the injury sustained by the claimant is on the higher side and prayed for reduction of compensation on all heads.

10. Having gone through the award passed by the Tribunal and also going through the nature of injuries suffered by the claimant in the accident and taking into account the fact that the doctor has fixed the disability at 50%, this court is of the considered view that no interference is called for warranting reduction of compensation. Further, this court is of the considered view that the compensation awarded under the heads "pain and suffering" and "loss of earning" and "loss of amenities" are on the lower side. Accordingly, this court awards a further sum of Rs.50,000/- under the head "loss of amenities"; a further sum of Rs.30,000/- under the head "pain and suffering" and a further sum of Rs.20,000/- under the head "loss of earning". Even though the learned counsel for the

claimant sought for compensation towards future medical expenses, since the Tribunal has already awarded a sum of Rs.1,32,000/- towards medical expenses, we are of the view that the same is just and proper and we are not inclined to enhance the same in the absence of any documents. Insofar as the amounts awarded under the other heads are concerned, the same appears to be justified in all aspects.

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this court
1	Loss of earning	Rs. 60,000/-	Rs. 80,000/-
2	Transport to Hospital	Rs. 5,000/-	Rs. 5,000/-
3	Extra Nourishment	Rs. 5,000/-	Rs. 5,000/-
4	Damage to clothing and articles	Rs. 1,000/-	Rs. 1,000/-
5	Medical expenses	Rs.1,32,000/-	Rs.1,32,000/-
6	Attender charges	Rs. 7,000/-	Rs. 7,000/-
7	Compensation for loss of amenities	Rs. 10,000/-	Rs. 60,000/-
8	Pain and suffering	Rs. 50,000/-	Rs. 80,000/-
9	Compensation for continuing permanent disability	Rs. 5,10,000/-	Rs. 5,10,000/-
	Total	Rs.7,80,000/-	Rs. 8,80,000/-

12. In the result, C.M.A.No.280 of 2014 is dismissed and C.M.A.No.3240 of 2013 is partly allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.8,80,000/- from Rs.7,80,000/-. Thus, a sum of Rs.1,00,000/- is awarded over and above the compensation granted by the tribunal.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition in M.C.O.P.No.3892/2011 till the date of deposit.
- (iii) This Court by order dated 12.02.2014 directed the appellant/transport corporation in CMA.No.280/2014 to deposit Rs.5,00,000/- along with accrued interest. In view of the compensation, being enhanced by this court,

the Transport Corporation is directed to deposit the balance amount of compensation along with interest, less the amount already deposited within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant is permitted to withdraw the enhanced award amount by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra.

(v) There will be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petition is closed.

nvsri

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal
III Small Cause Court, Chennai.
2. The Section Officer,
V.R.Section, High Court,
Madras.
3. The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd,
No.3/137, salamedu, Vahuthareddy,
Villupuram.

+ 1 cc to Mr.K.J.Sivakumar, Advocate SR 23390
+1cc to M/S.M.Swamikkannu, Advocate sr.23350 [21/06/2016]

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C.M.A.No.280 of 2014
and C.M.A.3240 of 2013