

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.3291 of 2014
and M.P.Nos.1 and 2 of 2014 &
C.M.P.No.403 of 2016

Tamilnadu State Transport Corporation
Villupuram Limited
rep. by its Managing Director
Kanchipuram Region
Villupuram 605 503

.Appellant/Respondent

vs.

M.Sasikumar

.Respondents/Petitioner

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the decree dated 30.04.2014 passed in M.C.O.P.No.2272 of 2009 on the file of the Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai.

For Appellant :Mr.P.Paramasivados
For Respondent :Mr.ST.Varadarajulu

JUDGMENT

(Judgment of the Court was delivered by S.VAIDYANATHAN,J.)

This Civil Miscellaneous Appeal has been preferred by the Transport Corporation, challenging the Judgment and decree of the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai dated 30.04.2014 passed in M.C.O.P.No.2272 of 2009, whereby, the Tribunal has awarded a compensation of Rs.24,74,000/-, together with interest at 7.5% p.a. from the date of the petition till such deposit is made.

2. On 09.05.2008, at about 7.30 a.m., while the respondent/claimant was on duty in the bus bearing Registration No.TN-21-N-0844 and when the bus was plying from Sulurpet to Chennai-Koyambedu near the Pudukkottai Thachoor Junction Road at

Paravallour, the lorry which was running in front of the bus suddenly stopped and turned right and in order to avoid the accident, the bus driver turned the bus to left side but unexpectedly, the bus dragged on to the left side and came down from the road down to a steep valley, thereby the respondent/claimant, the conductor of the bus, sustained grievous injuries by falling down from his seat within the bus, due to the sudden jerking of the bus. According to the respondent/claimant, the driver of the bus is responsible for the accident and hence, he claimed a claim petition before the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal"), IV Court of Small Causes, Chennai, claiming compensation to the tune of Rs.19,76,000/- (Claim amount enhanced and amended as per order in M.P.No.1153/14 dated 11.4.2014 before the Tribunal).

3. In support of the claim, the claimant was examined as P.W.1; Dr.K.J.Mathizhagan was examined as P.W.2; and Ex.P-1 to Ex.P.9 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the AR and OP Chit
P2	Copy of FIR
P3	Discharge summary issued by Govt. General Hospital
P4	Medical Bills
P5	Discharge summary and inpatient bill issued by C.S.I. Rainy hospital
P6	Disability certificate issued by District Disabled Rehabilitation Officer
P7	Original School Transfer Certificate
P8	Disability certificate issued by P.W.2
P9	X-ray film.

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal.

4. 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	Transport to hospital	Rs.1,00,000/-
2	Extra Nourishment	Rs.1,00,000/-
3	Medical Expenses	Rs.3,00,000/-

Sl. No.	Head	Amount granted by the Tribunal
4	Mental Shock	Rs.1,00,000/-
5	Loss of Future Prospects	Rs.1,00,000/-
6	Attender charges	Rs. 50,000/-
7	Loss of Expectation of Life	Rs.1,00,000/-
8	Loss of marital life and social status	Rs.1,00,000/-
9	Loss of Amenities	Rs.1,00,000/-
10	Pain and suffering	Rs.2,00,000/-
11	Disability Rs.6,000 x 12 x 17 x 100%	Rs.12,24,000/-
	Total	Rs.24,74,000/-

This Civil Miscellaneous Appeal is filed by the Transport Corporation questioning the quantum of compensation awarded.

5. According to the learned counsel appearing for the appellant/Transport Corporation, the Tribunal has not given any reason for adjudging that the claimant was totally disabled and according to him, the case of total disablement can be adjudged only if there is disability faced by the Workman on account of the disablement of injury suffered as per Schedule I and II of the Workmen's Compensation Act, 1923. The learned counsel for the appellant/Corporation submitted that 17 multiplier has been taken, after fixing the salary at Rs.6,000/- per month, by taking 100% disability, without expressing anything about the details, as to how the disablement has resulted in totally debarring his daily activity. Thus, according to the learned counsel, fixing 100% disability by the Tribunal is not correct.

6. That apart, according to the learned counsel for the appellant/Corporation, the material evidence with respect to the losing of the status of sense below the ribs, complete loss of locomotion or dependency on others is fallacious and untrue and the respondent's physical disablement was untrue and it was only to a small extent of 25% as held by the Tribunal at the exparte stage itself.

7. On the other hand, the learned counsel for the respondent/claimant submitted that the respondent/claimant, conductor of the bus bearing Registration No. TN-21-N-0844, aged 30 years, met with an accident on 09.05.2008, thereby suffering fracture d 12 paraparsis pain and was treated as inpatient from 09.05.2008 to 24.05.2008 at Government General Hospital, Chennai and undergone surgery thereby posterior stabilization was done. Thereafter, he was treated as inpatient from 16.06.2010 to

18.06.2010 at C.S.I.Rainy Multi Speciality Hospital, Chennai. In spite of treatment taken in the hospital even at the time of discharge it is reported that the power in the lower limbs remains the same as that during admission, along with the inability to move the lower limbs, the injury has further led to neurological deficit. According to the learned counsel, pursuant to the injuries sustained, the spine movement restricted and there is much difficulty in walking without support and thereby activities of the daily life is affected. (100% disablement).

8. The learned counsel for the respondent/claimant further contended that at the time of accident, the respondent/claimant was working as a Conductor in TNSTC (Villupuram) Ltd., and earning a sum of Rs.6,360/- per month and the Tribunal, adopting the multiplier 17, taking the age as 31 years as per the II Schedule, and taking the monthly income as Rs.6,000/-, has awarded a sum of Rs.12,24,000/- under the heading "Pecuniary loss" by rightly taking into account 100% disability. According to the learned counsel, since the respondent has become totally invalid, could not continue his job, he is being denied the job and unable to go for any work due to the injuries sustained, the tribunal is justified in fixing 100% disability. He would further submit that the respondent/claimant is not at all employed.

Based on the above, the learned counsel for the respondent/claimant sought for dismissal of the above Civil Miscellaneous Appeal.

9. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

10. The factum that the respondent/claimant is not employed after the date of accident is not in dispute, excepting the contention of the appellant that the respondent/claimant is not a regular employee. The Tribunal, considering the facts and circumstances and the educational qualifications of the respondent, by placing reliance on Ex.P.9, salary slip, has rightly fixed the income of the respondent at Rs.6,000/- p.m., which cannot be said to be excessive. That apart, from the evidence adduced before the trial Court with regard to the injuries sustained, it is clear that the respondent suffered 100% disablement. In the medical certificate filed before the Tribunal, P.W.2 Dr.K.J.Mathizhagan, though has assessed the disability at 70%, mentioned that the respondent/claimant has suffered fracture D12 paraparsis, pain and stiffness, spine movements restricted, weakness of lower limb muscles 3/5, difficulty in walking without support, activities of daily life

affected and thus he has totally become disabled and he has no chance to go for any employment and earn for his family. Hence, this Court is of the view that there is permanent disablement, which invalidate his employment. Hence, we find that the Tribunal's approach in fixing the disability at 100% cannot be found faulted.

11. As far as the multiplier adopted is concerned, the Tribunal has correctly adopted the multiplier 17 in the light of the decision reported in 2009 ACJ 1298 SC (Sarala Verma & Ors. vs. Delhi Transport Corporation and Anr.).

11. However, when we analyse the heads under which the compensation awarded, we are of the view that when the Tribunal is right in granting compensation by fixing the disability at 100%, the compensation under the headings "loss of future prospects", "Loss of expectation of life" and "Loss of amenities", ought not to have been awarded. Hence, by holding that the Tribunal has erred in awarding compensation under the above referred headings, while we delete the amounts awarded under the headings "loss of future prospects", "Loss of expectation of life" and "Loss of amenities", we confirm the compensation awarded under the other heads.

13. 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	Transport to hospital	Rs.1,00,000/-	Rs.1,00,000/-
2	Extra Nourishment	Rs.1,00,000/-	Rs.1,00,000/-
3	Medical Expenses	Rs.3,00,000/-	Rs.3,00,000/-
4	Mental Shock	Rs.1,00,000/-	Rs.1,00,000/-
5	Loss of Future Prospects	Rs.1,00,000/-	0
6	Attender charges	Rs. 50,000/-	Rs. 50,000/-
7	Loss of Expectation of Life	Rs.1,00,000/-	0
8	Loss of marital life and social status	Rs.1,00,000/-	Rs.1,00,000/-
9	Loss of Amenities	Rs.1,00,000/-	0
10	Pain and suffering	Rs.2,00,000/-	Rs.2,00,000/-
11	Disability Rs.6,000 x 12 x 17 x 100%	Rs.12,24,000/-	Rs.12,24,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
	Total	Rs.24,74,000/-	Rs.21,74,000/-

14. There is no serious objection in respect of the interest granted at 7.5% per annum.

16. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.21,74,000/- from Rs.24,74,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The appellant/Corporation is directed to deposit the entire award amount as ordered by this Court, to the credit of M.C.O.P.No.2272 of 2009 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit, the claimant is permitted to withdraw the award amount on filing necessary application before the Tribunal.

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

Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

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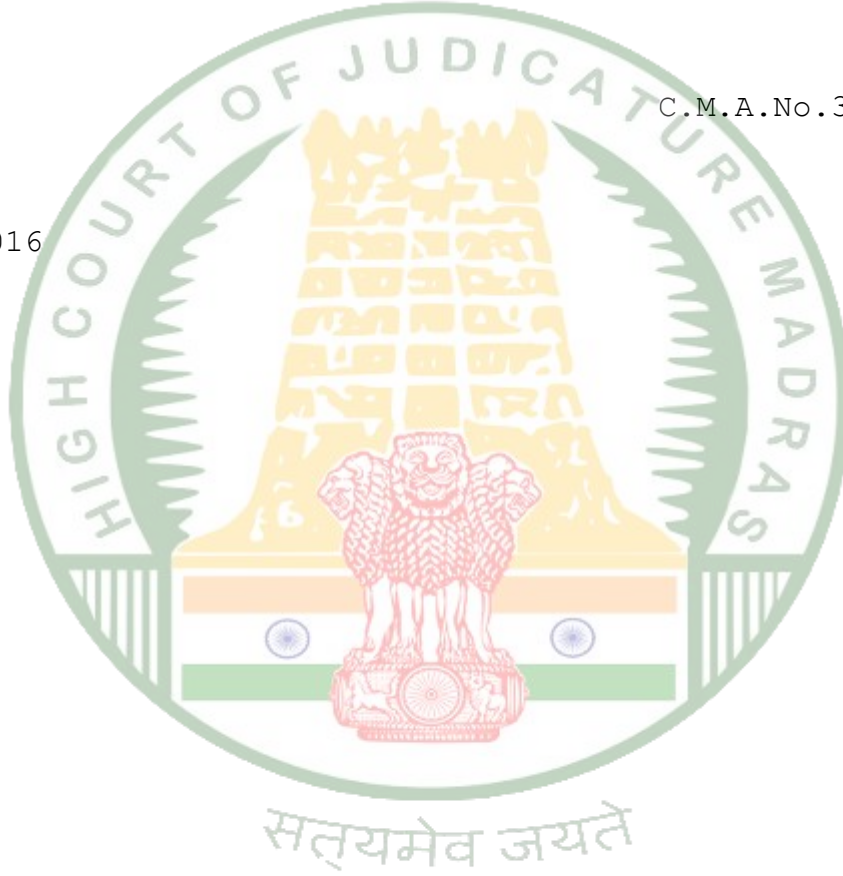
1.The Presiding Officer,
IV Court of Small Causes
(The Motor Accidents Claims Tribunal)
Chennai.

2.The Section Officer,
VR Section High Court Chennai

+1 cc to Mr.P.Paramasiva Doss Advocate sr.11226
+1 cc to Mr.S.T.Varadarajulu Advocate sr.10958

C.M.A.No.3291 of 2014

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