

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2016

CORAM

THE HONOURABLE MR JUSTICE M.M.SUNDRESH

&

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.M.A. Nos.3393 of 2010 & 3374 of 2011

C.M.A.No.3393 of 2010

A.V.K.Dhamotharan ... Appellant/Claimant

Versus

Metropolitan Transport Corporation

[Chennai Division] Ltd.,

Rep. by its Managing Director,

Pallavan Salai, Chennai-60 002

.. Respondent/Respondent

C.M.A.No.3374 of 2011

Metropolitan Transport Corporation

[Chennai Division] Ltd.,

Rep. By its Managing Director,

Pallavan Salai, Chennai-60 002.

.. Appellant/Respondent

Versus

A.V.K.Dhamotharan

.. Respondent/Claimant

PRAYER in both cases: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order dated 07.06.2010 passed in M.C.O.P.Nos.4703 of 2006 on the file of the Motor Accidents Claims Tribunal, (V Judge, Small Causes Court) Chennai.

For Appellant in CMA.No.3393/2010 &: Mr. R. Kalai Arasan

Respondent in CMA.No.3374/2011

For Respondent in CMA No.3393/2010 &: Mr.S.S.Swaminathan

Appellant in CMA No.3374/2011

COMMON JUDGMENT

[Judgment of the Court was delivered by M.S.RAMESH,J]

Both the Civil Miscellaneous Appeals arise under a common order dated 07.06.2010 passed in M.C.O.P.No.4703 of 2006 on the file of the Motor accidents Claim Tribunal (V Judge, Small

Causes Court), Chennai. The Appellant in CMA No.3393 of 2010 is the claimant and the appellant in CMA No.3374 of 2011 is the Transport Corporation. For the sake of convenience, the parties to these appeals are referred to as 'claimant' and 'Corporation'.

2.The brief facts of the case are as follows:

The claimant was travelling as a pillion rider in the motor cycle bearing Registration No.TN-20-AX-8192 on 05.07.2006 at about 22.30 hours from Thiruvattiyur to Ennore along Thiruvattiyur High Road. While the motor cycle was proceeding along Erannavur Bridge, the bus belonging to the Corporation bearing Registration No.TN-01-N-3738 came from behind and hit against the motor cycle, in which, the claimant fell down and sustained grievous injuries. The claimant filed a claim petition in M.CO.P.No.4703 of 2006 before the Motor Accident Claims Tribunal (V Judge, Court of Small Causes), Chennai, claiming compensation of Rs.27 lakhs under various heads before the Tribunal. The claimant had examined four witnesses, viz., PW1 to PW4 and 10 documents were marked as Exs.P1 to P10. The Corporation had examined RW1 N.Thulakkanam alone and had not marked any documents. The Tribunal had come to the conclusion that the negligence was on the part of the driver of the bus belonging to the Corporation and held that the Corporation is solely responsible for the accident and had awarded a compensation of Rs.12,99,000/- under various heads in the following manner:

Sl.No.	Heads	Amount awarded
1	Transport to hospital	Rs. 1,000.00
2.	Extra nourishment	Rs. 5,000.00
3.	Damage to clothing and articles	Rs. 1,000.00
4.	Loss of matrimonial life	Rs. 75,000.00
5.	Mental agony for loss of left spleen	Rs. 25,000.00
6.	Mental agony for disfigurement	Rs. 50,000.00
7.	Mental agony for not being able to walk, stand and run	Rs. 50,000.00
8.	Artificial limb	Rs. 99,000.00
9.	Loss of life expectancy	Rs. 25,000.00
10.	Loss of social life	Rs. 25,000.00
11.	Compensation for pain and suffering	Rs. 25,000.00
12.	Compensation for loss of earning power	Rs. 9,18,000.00
	Total compensation	Rs.12,99,000.00

3. Aggrieved against the same, the claimant had filed the Civil Miscellaneous Appeal in C.M.A.No.3393 of 2010 and the Corporation had filed the Civil Miscellaneous Appeal in C.M.A.No.3374 of 2011. Since both the appeals arise under a common order dated 07.06.2010, both the appeals are jointly dealt herewith in this judgment.

4. We have given careful consideration to the submissions made by respective counsels.

5. With regard to negligence, the Tribunal relying on the evidence of PW1 coupled with Ex.P1, which is the First Information Report and also taking into consideration the absence of any oral and documentary evidence on the part of the Corporation, had come to the conclusion that the driver of the Corporation had driven the bus in a rash and negligent manner owing to which, the accident had occurred. The claimant had suffered serious injuries which resulted in amputation of his left leg above the knee. The claimant had also sustained abdominal injuries, due to which, his spleen was removed and pancreas was ruptured. Further, the claimant had sustained fracture in his 3rd, 4th, 5th and 6th ribs on the left side of his chest. The claimant was treated at Sugham Hospital, Chennai and was subsequently treated at the Government General Hospital, Chennai as inpatient from 06.07.2006 to 27.07.2006. He also underwent surgeries on 06.07.2006, 08.07.2006, 09.07.2006 and 19.07.2006. In spite of surgeries, the claimant's left leg was amputated and his spleen was removed and after taking into account the nature of the injuries and the evidences let in this regard, the Tribunal has fixed the total permanent disablement for the leg at 90% and removal of his spleen at 20% and in total disablement rounded off to 100%.

6. The claimant claimed to have worked as a Contract Worker - Assistant Supervisor through PW4 at M.S.Ashok Leyland Limited, Chennai-57 on a monthly salary of Rs.7,500/-. In support of the same, the claimant had marked Ex.P7, which is the salary certificate issued by his employer, PW4. The Tribunal, taking note of the fact that Ex.P7-salary certificate was issued on 17.07.2009 and the fact that the accident had occurred on 05.07.2006, had disbelieved the same. Nevertheless, the Tribunal had fixed the notional income of the claimant at Rs.150 per day [i.e. Rs.4500/- p.m.] and the annual income was derived at Rs.54,000/- [Rs. 4,500 x 12]. It is not in dispute that the claimant was aged about 24 years at the time of accident. Hence, by relying upon the schedule under Section 163 A of the Motor Vehicles Act, the Tribunal had fixed the multiplier factor at '17' and by taking into account the annual income of Rs.54,000/- of the claimant and by applying the multiplier of '17', the claimant's loss of earning capacity was arrived at

Rs.9,18,000/-. Apart from the loss of earning capacity, the Tribunal had also awarded a sum of Rs.1,31,000/- towards general damages which includes Transport to hospital, Extra Nourishment, Damages to clothing and articles, purchase and fixation of artificial limb and pain and suffering. Adding a sum of Rs.2,50,000/- towards non-pecuniary damages, namely, mental agony for loosing leg and spleen, attendant charges, mental agony for disfigurement, loss of matrimonial prospects, loss of expectancy and loss of social life, the total award passed by the Tribunal was arrived at Rs.12,99,000/- and the Corporation was also directed to pay interest on the award amount at Rs.7.5% p.a. from the date of the claim petition. Insofar as non-pecuniary damages of Rs.2,50,000/- and the general damages of Rs.1,31,000/- is concerned, we are of the considered view that the Tribunal had rightly arrived at the figure by considering the petitioner's injury, treatment and his general physical condition. We do not intend to interfere in the same and accordingly, the award of the Tribunal insofar as 'Pecuniary Damages' and 'General Damages' are concerned is confirmed.

7. With regard to the liability, though the learned counsel for the Corporation made a faint attempt to influence the Court that in view of the delay in lodging the FIR, no adverse inference can be drawn against the claimant. By citing the date and the time of the accident and also the delay in lodging the FIR, the learned counsel for the Corporation submitted that there is no convincing reason for the delay in lodging the FIR against the driver of the Corporation.

8. We are unable to countenance the submissions made by the learned counsel for the Corporation, since this is not a proceeding under Section 482 to quash the FIR. Even otherwise, the delay in lodging the FIR cannot absolve the driver's liability. The FIR is only a supporting document for assisting the Court to come to a conclusion and for fixing the negligence on the erring person. The Tribunal by relying upon the evidence of PW1 and the FIR, which was marked as Ex.P1, had concluded that the driver of the bus belonging to the Corporation had driven in a rash and negligent manner and thereby caused the accident. We, therefore, find no reason to defer with the findings of the Tribunal in fixing the negligence on the part of the driver of the Corporation.

9. The Tribunal had disbelieved the evidence of the claimant's employer viz., PW4, since the salary certificate marked as Ex.P7 was issued on 17.07.2009, i.e. after the accident. However, the Tribunal had notionally fixed the claimant's income at Rs.4,500/- p.m. on a presumption that a person can earn Rs.150/- per day. The claimant was aged about 24 years, at the time of the accident. PW4, in his evidence has also stated that the claimant was employed with them for a period of five years and these aspects were not taken into

account. In our view, the Tribunal's presumption that a person is capable of earning a sum of Rs.150/- per day appears to be on the lower side. As stated by PW4, the claimant was working under him as Assistant Supervisor from May, 2002 and was drawing a salary of Rs.5000/- as monthly salary. Hence, it would be appropriate that the claimant's employment with PW4 as Assistant Supervisor drawing a sum of Rs.5000/- per month could be taken as a notional income that the claimant could have earned at the time of accident. Accordingly, his annual income is derived at Rs.60,000/- [Rs.5000 x 12].

10. The Tribunal had rightly fixed the claimant's disability at 100% based on the evidence of PW2, who is an Orthopedic surgeon and PW3, the Civil Surgeon, who had issued the disability certificate Exs.P9 and P10. The total disablement was arrived at 110% which was rounded off at 100%. The loss of earning capacity of the claimant would work out to Rs.10,20,000/- [Rs.60,000 x 17]. Except this modification, the compensation awarded by the Tribunal under other heads shall remain unaltered. The enhanced compensation is detailed below:-

Sl.No.	Heads	Amount awarded	Enhanced award amount
1	Transport to hospital	Rs. 1,000.00	Rs. 1,000.00
2.	Extra nourishment	Rs. 5,000.00	Rs. 5,000.00
3.	Damage to clothing and articles	Rs. 1,000.00	Rs. 1,000.00
4.	Loss of matrimonial life	Rs. 75,000.00	Rs. 75,000.00
5.	Mental agony for loss of left spleen	Rs. 25,000.00	Rs. 25,000.00
6.	Mental agony for disfigurement	Rs. 50,000.00	Rs. 50,000.00
7.	Mental agony for not being able to walk, stand and run	Rs. 50,000.00	Rs. 50,000.00
8.	Artificial limb	Rs. 99,000.00	Rs. 99,000.00
9.	Loss of life expectancy	Rs. 25,000.00	Rs. 25,000.00
10.	Loss of social life	Rs. 25,000.00	Rs. 25,000.00
11.	Compensation for pain and suffering	Rs. 25,000.00	Rs. 25,000.00
12.	Compensation for loss of earning power	Rs. 9,18,000.00	Rs.10,20,000.00

Sl.No.	Heads	Amount awarded	Enhanced award amount
	Total compensation	Rs.12,99,000 .00	Rs.14,01,000. 00

11.It is seen that the Corporation had deposited the entire award amount to the credit of M.C.O.P.No.4703 of 2006 and by order dated 18.11.2011 made in M.P.No.1 of 2011 in CMA No.3374 of 2011, the claimant was permitted to withdraw 50% of the amount lying in deposit and the remaining balance amount was directed to deposit in Fixed Deposit in India Bank, Besant Nagar Branch, Chennai, initially for a period of three years and thereafter, renewed periodically.

12.In an earlier order passed in C.M.A.Nos.2464 of 2011 and 2700 of 2011 dated 26.10.2016, we had prescribed the mode of disbursal of the enhanced compensation. We are of the considered view that the same mode could be adopted in this case also. Para-13 of the said order reads as under:

13. With regard to the disbursal of the enhanced compensation amount, this Court, in a Judgment dated 11.03.2016 passed in CMA.No.428 of 2016 (the Divisional Manager, The Oriental Insurance Co., Ltd., Kannur vs. Rajesh and two others) had formulated guidelines / directions to serve the cause of justice, more particularly to innocent and illiterate victims/claimants. We deem it appropriate that the said guidelines also have to be adopted for this case for disbursing the enhanced compensation amount, so as to reach the claimants at the earliest. Paragraph 11 (vii) and (xv) of the above said Judgment dated 11.03.2016, are extracted hereunder:

"viii) The Claims Tribunal shall, as a matter of rule, direct the insurance companies or transport corporations or such other entities held liable to pay the compensation, to deposit the award sum to the credit of the bank account of the Claims Tribunal directly by NEFT or RTGS mode. The Registry will issue appropriate directions in this regard enabling the respective Claims Tribunal or the District Court concerned to open separate account, which will bear a suffix 'MACT' to identify that the account is in relation to motor accident claims.

xv) The Claims Tribunals shall ensure that as and when order is passed for disbursal of compensation amount, it will ensure that such disbursal of compensation shall be made directly to the credit of the bank account of the claimant/victim as the case may be NEFT or RTGS. The bank account details of the claimant/victim(s) shall be stated in

the award/order of the Claims Tribunal."

13.In the result,

(i) this Civil Miscellaneous Appeal No.3393 of 2010 is partly allowed and the Civil Miscellaneous Appeal No.3374 of 2011 is dismissed.

(ii) The award of the Tribunal is enhanced from Rs.12,99,000/- to Rs.14,01,000/-. The award amount including the enhancement compensation shall carry interest at the rate of 7.5% p.a. from the date of the claim petition till the date of deposit. The Corporation is directed to deposit the enhanced award amount within a period of eight weeks from the date of receipt of a copy of this order to the credit of Bank Account of the Claims Tribunal directly by NEFT or RTGS mode. The Claims Tribunal shall ensure that as and when the enhanced amount is deposited to the bank account, the same shall be disbursed directly to the credit of the bank account of the claimant by NEFT or RTGS. There shall be no order as to costs conneted M.P. is closed.

s/d-
Assistant Registrar(CS-III)

//True Copy//

Sub-Assistant Registrar

To

1. The V Judge,
The Motor Accidents Claims Tribunal,
(Court of Small Causes), Chennai.
2. The Section Officer, सत्यमेव जयते
V.R.Section,
High Court, Madras.

+2 Ccs to Mr. S.S. Swaminathan, Advocate sr 64312 & 64313
+2 Ccs to Mr. N.M. Muthurajan, Advocate sr 64464

C.M.A. No.3393 of 2010
&
C.M.A.No.3374 of 2011

KSJ (CO)
sp/24/2