IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA NOS.1572 OF 2016 AND 216 OF 2017
AND CMP NO.1459 OF 2017

CMA NO.1572 OF 2016

P.Anand Kumar Raja ... Appellant/Claimant

Versus

Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Erode, Chennimalai Road,
By its General Manager
Erode. ... Respondent /Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2015 made in MCOP No.1430 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1) Salem.

For Appellant : Mr.P.Jagadeesan
For Respondent : Ms.RT.Sundari

CMA NO.216 OF 2017

The General Manager
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Chennimalai Road, Erode. ... Appellant/Respondent

Versus

P.Anand Kumara Raja ... Respondent /Claimant

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2015 made in

MCOP No.1430 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge No.1) Salem.

For Appellant : Ms.RT.Sundari
For Respondent : Mr.P.Jagadeesan

COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Not satisfied with the award of compensation dated 18.12.2015, passed in M.C.O.P.No.1430 of 2011, by the Motor Accidents Claims Tribunal (Special Sub Judge - I) Salem, the claimant has preferred the appeal in C.M.A.No.1572 of 2016.

2. Against the very same award, challenging the quantum of compensation, the Transport Corporation has preferred an appeal in C.M.A.No.216 of 2017.

3. Since quantum of compensation is challenged in the very same award, both the appeals are taken up together and disposed of by a common judgment.

4. The version of the claimant is that the claimant while travelling in TOYOTA Innova Car, bearing Registration No.TN23-AC-2741, at about 09.30 p.m., near Kondalampatti New Over-bridge, Salem, a passenger bus belonging to the Transport Corporation, bearing Registration No.TN33-N-2482, driven in a rash and negligent manner, dashed against the Innova Car, from behind. The claimant has suffered severe injuries due to the rash and negligent driving of the driver of the respondent Transport Corporation bus. He was admitted in a Hospital and still undergoing treatment. He claimed a sum of Rs.1,91,00,000/- as compensation for the injuries and disabilities caused to him in the accident, by filing M.C.O.P.No.1430 of 2011, before the Motor Accidents Claims Tribunal (Special Sub Judge-I), Salem.

5. The Transport Corporation has denied the allegation of negligent driving and claimed that no liability could be fastened on them. According to the Transport Corporation, the driver of the Car was at fault, as the accident had taken place due to the rash and negligent driving of the driver of the car and further the claim is exorbitant and the same shall be restricted.

6. On the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and 15 documents were marked as Exs.P1 to P15. On the side of the Transport Corporation, two witnesses were examined as R.W.1 and R.W.2 and three documents were marked as Exs.R1 to R3. Two documents viz., Exs.X1 and X2

were marked as third party documents.

7. Based on the materials available on record, the Tribunal wanted to decide the matter on the issues of rash and negligent driving and quantum of compensation. The complaint was registered against the driver of the Corporation bus. In the criminal case before the Judicial Magistrate Court No.II, Salem, in C.C.No.1416 of 2014 the driver of the bus was acquitted. Exs.R1 to R3 draft sketch and judgment copy were relied on by the Corporation to establish that their driver was not negligent. Based on the evidence given by P.W.2, who was a passenger in the bus, the Tribunal had illustrated the fact that the driver of the respondent corporation bus had driven the vehicle in a rash and negligent manner and the same was substantiated by Ex.P1 - FIR and Ex.P15 - charge sheet. Applying the preponderances of probability, the Tribunal has come to the conclusion that the driver of the respondent transport corporation bus was rash and negligent in causing the accident.

8. In so far as the quantum of compensation is concerned, the claimant has let in evidence that he is 45 years of age and was earning Rs.23,530/- per month as he is a Civil Engineer and doing construction work. The age was ascertained on the basis of the entry in the PAN card (Ex.P2). The Tribunal has fixed the age of the claimant as 48 on the basis of Ex.P2. Ex.P5 is the Degree Certificate of the claimant for having studied B.E. (Civil). Ex.P3 is the acknowledgment of income tax return filed by the claimant which shows that the annual income after all deductions is Rs.2,82,360/-. Based on the evidence and the documents, the Tribunal has fixed the monthly income of the claimant as Rs.10,000/-. Considering the grievous injuries sustained by the claimant and that he had become immobile due to D3 fracture with complete paraplegia and below the nipple of chest, the body is completely paralyzed, the Doctor has certified 100% disability.

9. Since the claimant had suffered 100% disability and suffering from total paraplegia, he could not move anywhere and could not continue his profession, the Tribunal has fixed loss of earning at Rs.18,25,200/- (Rs.11,700 X 12 X 13) and allowed medical expenses to a sum of Rs.26,08,000/- as evidenced by Ex.P11 and also the expenses incurred for attendant charges at Rs.8,88,000/- and a sum of Rs.3,60,000/- for future attendant charges; for permanent disability Rs.1,00,000/-; for pain and suffering Rs.1,50,000/- and a total compensation of Rs.64,33,000/- was awarded.

10. The Transport Corporation filed an appeal on the grounds that the compensation awarded is exaggerated and the

claimant does not prove the entitlement with proper documents and therefore, the award of compensation has to be set aside.

11. We have considered the factual aspects of the case and the oral and documentary evidence adduced in support of the claimant.

12. It is clearly proved by way of evidence of P.W.1 - claimant and P.W.2 - eyewitness that the accident had taken place due to the rash and negligent driving of the driver of the bus. The bus had hit the Car, in which the claimant was travelling, from behind and FIR was registered vide EX.P1 and charge sheet was filed as Ex.P15. Therefore, the finding of the Tribunal, in so far as the negligence part of it, is concerned, it is correct and based on preponderance of probability, it can be clearly inferred that the accident had taken place due to the rash and negligent driving of the driver of the respondent Transport Corporation bus.

13. In so far as the quantum of compensation is concerned, we find that the acknowledgment to the income tax return filed for the year 2009 - 2010 before the income tax authorities is marked as Ex.P3. The accident had taken place on 21.03.2011, whereas the income tax return was filed on 30.12.2009, i.e., much earlier to the date of accident. The balance sheet filed vide Ex.P4 clearly proves that the claimant has earned around Rs.2,82,360/- per annum. There is no reason to deny the same. As per Ex.P3, the total taxable income is Rs.2,57,360/-. The income tax return and the acknowledgment issued by the Income Tax Department are a public document and there is no reason to disagree with the same. One can attribute suspicion to a document, which comes into existence after the accident as it may reflect boosted income but not the anterior document. Therefore, we are of the opinion that the income of the claimant shall be based on Ex.P3, which was filed during 2009-2010, much earlier to the accident.

Annual income	-	Rs.2,57,360.00
30% Future prospects	-	Rs. 77,208.00
		Rs.3,34,568.00
Gross total income		Rs.3,34,568.00
Exemption under Section 80C, 80CCC, 80CCD etc.,		Rs.1,00,000.00
		Rs.2,34,568.00
Rounded off		Rs.2,34,570.00
Tax rate:		
Upto Rs.1,60,000/-		Nil

Rs.1,60,001/- to Rs.5,00,000/-	10%	Rs.7,457.00
Cess	3 %	Rs. 224.00
		Rs.7,681.00
Less tax amount		Rs.7,681.00
		Rs.3,26,887.00
Less: living expenses Rs.3,26,887/- X 3/4		Rs. 2,45,165.00
Multiplier 13 (Rs.2,45,165/- X 13)		Rs.31,87,145.00

Loss of income	Rs.31,87,145.00
Pain and suffering	Rs. 2,50,000.00
Medical expenses	Rs.26,08,500.00
Loss of amenities and enjoyment of life	Rs. 2,00,000.00
Transportation	Rs. 1,00,000.00
Nourishment	Rs. 1,00,000.00
Attendant charges	Rs. 8,88,000.00
Damages	Rs. 1,300.00
Future attendant charges	Rs.7,20,000.00
Future medical expenses	Rs. 2,00,000.00
Permanent disability	Rs. 2,00,000.00
Total	Rs.84,54,945.00
Total compensation (Rounded off)	Rs.84,54,950.00

14. The Tribunal has rightly applied the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] and had given 30% towards future prospects. Same 30% is given to the claimant towards future prospects and after deducting the income tax applicable for the financial year 2010-2011, the annual income is arrived at Rs.3,26,887/-. After deduction of 1/4th towards living expenses, the same comes to Rs.2,45,165/-. Applying multiplier 13, the loss of income is arrived at Rs.31,87,145/-.

15. We have perused Ex.P11 - medical bills. The treatment given to the claimant and percentage of disability allotted is correlated. Wd we believe that the treatment given to the claimant and the medical bills produced by the claimant correlates each other and thus, we are in agreement with the finding of the Tribunal on the grant of award of medical expenses and attendant charges.

16. In so far as the future attendant charges is concerned, salary at the rate of Rs.6,000/- per month is calculated even for an attender. In the present appeals, the Tribunal has awarded Rs.3,60,000/- i.e., at the rate of Rs.3,000/- per month. But from the documents filed before the Tribunal, it is seen that the claimant was given treatment till

2014 and still undergoing treatment. His weight is said to be 120 KGS. For a person, who is lying in a bed, suffering from total paraplegia, cannot move without the assistance of at least two persons. It is also seen that he had suffered D3 fracture with complete paraplegia and below the nipple chest of the body complete paralyzed. Therefore, the injuries sustained and the consequential treatment given to the claimant accounts that he could have incurred all the medical expenses as evidenced by the medical bills - Ex.P11 and therefore, we are confirming the grant of medical expenses under this head. As per today's price index, the claimant may require to engage a servant and the salary would be at Rs.6,000/- and as awarded by the Tribunal, we granted for 120 days and the compensation is enhanced from Rs.3,60,000/- to Rs.7,20,000/- (Rs.6000 /- X 120 days = Rs.7,20,000/-). Thus, the total compensation is arrived at Rs.84,54,950/-.

17. In view of the reworking of compensation, the Civil Miscellaneous Appeal filed by the claimant in C.M.A.No.1572 of 2016 is allowed in part, as indicated above. The Civil Miscellaneous Appeal filed by the Transport Corporation in C.M.A.No.216 of 2017 is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

18. Till date, Transport Corporation has not deposited any amount. Therefore, a direction is issued to the Transport Corporation to deposit the entire award amount with interest at the rate of 7.5% per annum from the date of filing of the petition, till deposit, and costs, within a period of three months, in three equal installments. The first installment shall be paid within one month from today. We have directed the learned counsel for the transport corporation to communicate the same to the Tamil Nadu State Transport Corporation Ltd., Erode, which shall be obeyed promptly.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1. The Special Sub Judge No.I,
   The Motor Accidents Claims Tribunal
   (Special Sub Court No.1)
   Salem.

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

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.18411
+1cc to Ms.R.T.Sundari, Advocate, S.R.No.18370

CMA NOS.1572 OF 2016 AND 216 OF 2017

KJI(CO)
RS(20/06/2017)