

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1442 of 2014
and M.P.No.1 of 2014

and
Cross Objection No.92 of 2014

C.M.A.No.1442 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram. .. Appellant/Respondent

Vs

P.Sundaramoorthy
S/o.Palanivel .. Respondent/Petitioner

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the Decree and judgment of learned Chief Judicial Magistrate, Motor Accident Claims Tribunal, Villupuram, passed in M.C.O.P.No.246 of 2011 on 22.07.2013.

For Appellant : Mr.S.V.Vasanth Kumar

For Respondent : Mr.C.Munusamy

Cross Objection No.92 of 2014

P.Sundaramoorthy
S/o.Palanivel .. Appellant/Cross Objector

Vs

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram. .. Respondent/Respondent

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code against the Decree and judgment of learned Chief Judicial Magistrate, Motor Accident Claims Tribunal, Villupuram, passed in M.C.O.P.No.246 of 2011 on 22.07.2013.

For Appellant : Mr.C.Munusamy

For Respondent : Mr.S.V.Vasantha Kumar

C O M M O N J U D G M E N T

[Judgment of the Court was made by C.T.SELVAM, J.]

This appeal and Cross Objection arise against the judgment of learned Chief Judicial Magistrate, Motor Accident Claims Tribunal, Villupuram, passed in M.C.O.P.No.246 of 2011 on 22.07.2013.

2. Appellant is a transport corporation. Cross Objector is the claimant. On 27.08.2007 at about 20.30 hours, while cross objector was driving his Car bearing registration No.PY-01-J-9270 with two persons aboard, a bus bearing registration No.TN-32-N-2128 belonging to appellant transport corporation, driven in a rash and negligent manner, hit the Car resulting in the persons travelling therein sustaining grievous injuries. Cross Objector sought compensation in a sum of Rs.7,00,000/-.

3. Before the Tribunal, on the side of cross objector/claimant, 4 witnesses were examined and 24 exhibits were marked. One witness was examined on the side of appellant transport corporation and no exhibits were marked.

4. On appreciation of materials before it, Tribunal, under judgment dated 22.07.2013, found that the accident has occurred owing to the rash and negligent driving of the bus and awarded compensation as follows:

(a) Medical expenses	:	Rs.11,30,880/-
(b) Partial disability	:	Rs. 1,20,000/-
(c) Loss of earning capacity	:	Rs. 25,000/-
(d) Pain and suffering and mental agony	:	Rs. 20,000/-
(e) Loss of income	:	Rs. 13,500/-
(f) Transport expenses	:	Rs. 5,000/-
(g) Nutrition	:	Rs. 5,000/-
(h) Clothing	:	Rs. 1,000/-

Rs.13,20,380/-

The said sum of Rs.13,20,380/- was directed to be paid with interest at 7.5% p.a. from the date of petition till the date of deposit.

5. Heard learned counsel for appellant transport corporation and learned counsel for cross objector/claimant.

6. Learned counsel for appellant transport corporation submitted that the Tribunal erred in awarding a sum of Rs.11,30,880/- towards medical expenses. Learned counsel submitted that no proof has been produced regards the age of the claimant.

7. Learned counsel for cross objector/claimant submitted that the claimant was earning Rs.7,000/- p.m. as an Inspector with PACL Insurance Company and owing to the accident had now to remain idle. He has suffered multiple injuries and undergone several operations and as such Court below ought to have adopted the multiplier method for determining the compensation instead of taking the disability as partial at 60% and awarding a sum of Rs.2,000/- per percentage of disability.

8. This Court is of the view that even in the absence of any proof, the monthly earning of the claimant may be placed at Rs.4,500/- p.m. Cross Objector/claimant has suffered the following injuries:

- (1) Left frontal hemorrhagic contusion #.
- (2) Commuted fracture floor of right acetabulum.
- (3) Right hip joint dislocation.
- (4) Fractured anterior and posterior Arch of C1, C2 ##.
- (5) Traumatic IIII Criminal Nerve palsy #.
- (6) Right optic nerve injury #.
- POLY TRAUMA: HEAD INJURY with
- (7) Lacerated wound over right side cheek, face and bucco binbival #.
- (8) Abrasive skin loss right hand dorsum with cut extension to mid and ring finger, index finger #.
- (9) Lacerated wound over R5 EAR lobule Right Knee Area and Right Big Toe #.
- (10) Posterior Dislocation of Hip Right side with Acetabular Fracture #.

Ex.P4, discharge summary, reveals immediate treatment there regards. Thereafter, cross objector/claimant has undergone further surgeries including skin grafting and plastic surgery. The claim of medical expenses has found support in hospital records and medical bills. The claim of medical bills quite rightly has been accepted by Tribunal taking into account the evidence of PW-4, Doctor and Ex.P14, medical bills. Considering the nature of injuries, this Court is of the view that it would have been appropriate to apply multiplier method as there absolutely can be no doubt that given the injuries suffered the

ability of claimant carrying out his normal avocation would be greatly affected. This Court is unable to accept the submission of learned counsel for appellant regards non-production of proof of age in the absence of appellant raising such question before the Tribunal. Though learned counsel for cross objector/claimant submitted that the amount awarded towards pain and suffering is on the lower side, this Court is not inclined to interfere. Accordingly, the compensation payable under the head disability would be Rs.5,26,500/- (4,500*12*15*65%) and the total compensation payable would be Rs.17,26,880/-. Such sum shall be paid together with interest at 7.5% p.a. from the date of petition till the date of deposit.

The Civil Miscellaneous Appeal is dismissed. The Cross Objection is partly allowed. Appellant transport corporation is directed to deposit the enhanced compensation amount less that already deposited within a period of eight weeks from the date of receipt of this judgment. On such deposit being made, cross objector/claimant is at liberty to withdraw the same on due application. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gm
To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Villupuram.
2. The Section Officer,
VR Section,
High Court, Madras-600 104.

+1cc to Mr.S.V.Vasantha Kumar, Advocate, S.R.No.83061

+1cc to Mr.C.Munusamy, Advocate, S.R.No.82358

Civil Miscellaneous Appeal No.1442 of 2014
and Cross Objection No.92 of 2014

EV(CO)
CS/12/03/18