

IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 28.07.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.2839 of 2015
and
M.P.No.1 of 2015

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

Vs.

Senthil Kumar ... Respondent/Petitioner

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 03.02.2015 in M.C.O.P.No.1836 of 2013 passed by the Motor Accident Claims Tribunal, (IV Court of Small Causes), Chennai.

For Appellant : Mr.P.Paramasivadoss

For Respondent : Mr.V.Vargees Amal Raja

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

This appeal has been filed by the Transport Corporation challenging the award dated 03.02.2015 in M.C.O.P.No.1836 of 2013 passed by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

2. The respondent herein is the claimant before the Tribunal. It is the case of the claimant before the Tribunal that on 02.09.2012, while he was riding his motor cycle bearing Regn.No.PY 01 5782 on Trichy-Chennai Road, near Melatheru Pallivasal, at that time, the bus bearing Regn.No.TN 25 N 0190 belonging to the appellant-Transport Corporation came in a rash and negligent manner from west to east and dashed against the

two-wheeler, which the claimant was riding, as a result of which he fell down and sustained grievous injuries. Hence, he made a claim for a sum of Rs.15 lakhs.

3. Before the Tribunal, in order to prove his case, on the side of the claimant, the claimant examined himself as P.W.1, besides examining one Dr.M.Saravanabavanantham as P.W.2 and marked 11 documents as Ex.A.1 to Ex.A.11. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1 and no document was marked.

4. The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident has occurred only due to the rash and negligent driving of the driver of the bus belonging to the Transport Corporation. By coming to such a conclusion, the Tribunal assessed the compensation under various heads and awarded a sum of Rs.14,89,400/- as compensation to the claimant. The breakup details of the award passed by the Tribunal are as follows_

1.Loss of Earning Power	= Rs.8,57,318/-
2.Pain and Suffering	= Rs.1,50,000/-
3.Extra-nourishment	= Rs.1,50,000/-
4.Transport to Hospital	= Rs.1,00,000/-
5.Damages to clothes	= Rs. 3,000/-
6.Attender charges	= Rs. 75,000/-
7.Medical expenses	= Rs. 54,101/-
8.Loss of Amenities	= Rs.1,00,000/-
Total	= Rs.14,89,318 (rounder off Rs.14,18,400)

Aggrieved over the same, the present appeal has been filed by the Transport Corporation.

5.When the matter is taken up, the learned counsel appearing for the appellant/Transport Corporation submitted that the present appeal has been filed challenging the quantum of compensation awarded by the Tribunal alone. In view of the said submission of the learned counsel for the appellant/Transport Corporation, it is not necessary to go into the other details of the award passed by the Tribunal.

6.So far as the quantum of compensation is concerned, it is observed by the Tribunal in its judgment that on account of the

accident, the claimant had sustained multiple injuries. Further, the Doctor P.W.2, who examined the claimant, has assessed the total disability suffered by the claimant under three heads. He has stated in his evidence that the claimant sustained laceration left eye brow, bilateral frontozygomatic injury, bilateral infra orbital rim fracture of bilateral maxilla and fracture of left mandible and surgery was performed with implantations for fracture of maxilla and mandible and also laprotomy abdominal opening done for liver laceratio, the claimant has got post traumatic head ache and vertigo because of frontal fracture and tremors. P.W.2 assessed the total disability suffered by the claimant at 90%. He has also adduced evidence to the effect that on account of the injuries sustained by the claimant, he would find it difficult to chew and masticate the food and he cannot sleep on the right side and he will have frequent indigestion. However, the Tribunal has fixed the total disability suffered by the claimant at 30% and by fixing the monthly income of the claimant as Rs.14,884/-, by applying multiplier 16, the Tribunal has awarded a sum of Rs.8,57,318/- under the had of Loss of Earning Power.

7.Assailing the said finding of the Tribunal, the learned counsel for the appellant/Transport Corporation submitted that the nature of disability suffered by the claimant has no connection with the avocation of the claimant, who is a Police Constable; that in the absence of any assessment with regard to the functional disability, the Tribunal ought not to have awarded the compensation by applying multiplier method. The Tribunal by fixing a sum of Rs.14,884/- as monthly income of the claimant, by applying multiplier 16, and by fixing the disability at 30%, has awarded a sum of Rs.8,57,318/- for Loss of Earning Power, which is on the higher side. Thus, the learned counsel for the appellant/Transport Corporation submitted that appropriate reduction has to be made in the award passed by the Tribunal.

8.Per contra, the learned counsel for the respondent/claimant made his submissions, supporting the award passed by the Tribunal.

9.Keeping in view the submissions made on either side, We have carefully gone through the entire materials available on record. We find that P.W.2, Doctor, had stated in his evidence that on account of the accident, the claimant sustained laceration on left eye brow, bilateral frontozygomatic injury, bilateral infra orbital rim fracture of bilateral maxilla and fracture of left mandible and surgery was performed with

implantations for fracture of maxilla and mandible and also laprotomy abdominal opening done for liver laceratio, the claimant has got post traumatic head ache and vertigo because of frontal fracture and tremors. The Doctor, P.W.2 has assessed the total disability suffered by the claimant at 90%. Though it is contended by the learned counsel for the appellant/Transport Corporation that the Doctor has not assessed the functional disability, considering the gravity of the injuries sustained by the claimant, this Court is of the view that the injuries sustained by the claimant would affect the normal works of the claimant, who is a Police Constable by avocation. Hence, the multiplier method adopted by the Tribunal cannot be said to be incorrect. However, considering the nature of the injuries, the percentage of 30% disability fixed by the Tribunal is on the higher and the same is hereby reduced to 20%. The monthly salary of the claimant, who is a Police Constable, is fixed as Rs.14,884/- by the Tribunal, which is based on his Pay Slip. Since the claimant is aged 35 years at the time of accident, the correct multiplier would be 16. If multiplier 16 is applied, the total loss of earning power would come to Rs.5,71,545/- (14,334 x 12 x 16 x 20%), which would be just and proper compensation under the said head. The compensation amounts awarded by the Tribunal under the other heads appear to be reasonable an the same need no alteration. Hence, the total compensation amount of Rs.14,89,400/- awarded by the Tribunal is hereby reduced to Rs.12,03,646/-. The breakup details of the modified compensation amount are as follows_

1.Loss of Earning Power	= Rs.5,71,545/-
2.Pain and Suffering	= Rs.1,50,000/-
3.Extra-nourishment	= Rs.1,50,000/-
4.Transport to Hospital	= Rs.1,00,000/-
5.Damages to clothes	= Rs. 3,000/-
6.Attender charges	= Rs. 75,000/-
7.Medical expenses	= Rs. 54,101/-
8.Loss of Amenities	= Rs.1,00,000/-

Total= Rs.12,03,646/-

10.In fine, the appeal is partly allowed and the total compensation amount of Rs.14,89,400/- (Rupees Fourteen Lakhs Eighty Nine Thousand and Four Hundred only) awarded by the Tribunal is hereby modified/reduced to Rs.12,03,646/- (Rupees Twelve Lakhs Three Thousand Six Hundred and Forty Six only). The appeal/Transport Corporation is directed to deposit the entire modified compensation amount, with interest, after deducting the amount if any already deposited, within a period of six weeks

from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the same by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petition is closed.
No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To,

The Motor Accident Claims Tribunal,
(IV Court of Small Causes),
Chennai.

+1cc to Mr.V.Vargees Amal Raja, Advocate, S.R.No.53717
+1cc to Mr.P.Paramasivadoss, Advocate, S.R.No.54178

C.M.A.2839 of 2015
and
M.P.No.1 of 2015

GP(CO)
CS/13/10/17



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