

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 25.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.280 of 2017

AND

CMP.No.2022 of 2017

The Managing Director
State Express Transport Corporation Limited
Tiruvalluvar House
Chennai - 2.

.. Appellant/Respondent

Versus

Gunasekaran

.. Respondent/Petitioner

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 14.10.2011 made in M.C.O.P.No.459 of 2008 on the file of the Motor Accident Claims Tribunal, the 1st Additional Subordinate Judge, Cuddalore.

For appellant : Mr.K.J.Sivakumar

J U D G M E N T

Challenging the negligence as well as the quantum of compensation awarded by the Claims Tribunal, in M.C.O.P.No.459 of 2008, dated 14.10.2011, the Transport Corporation has filed this Civil Miscellaneous Appeal.

2. On 10.11.2007 at about 10.45 a.m., on the Pondy Main Road at Reddichavadi near Karikkannagar Bus Stop, the transport corporation vehicle bearing Registration No.TN-01-N-6835, driven in a rash and negligent manner dashed against the claimant. Due to the accident, the claimant sustained multiple grievous injuries. According to the claimant, the driver of the bus alone was solely responsible for the accident. The claimant was aged 43 years at the time of accident and he was working as a Mason and earning Rs.7,000/- per month. The claimant claimed a total sum of Rs.5,00,000/- as compensation.

3. The Tribunal, after considering the submissions made on either side and also on considering the oral and documentary evidence has awarded a total compensation of Rs.1,07,680/- together with interest at the rate of 7.5% per annum. Challenging the same, the Transport Corporation has filed this

appeal.

4. The main contention of the learned counsel for the appellant is that the Tribunal ought not to have considered the evidence of P.W.1, whose evidence has not been corroborated by any other independent witness. It is further submitted that the Tribunal failed to note that no valid document was filed by the claimant to prove his age and income. Yet another contention of the learned counsel for the appellant is that the Tribunal ought not to have adopted multiplier method to calculate the loss of future earnings of the injured.

5. A perusal of the award passed by the Tribunal reveals that the Tribunal, based on the evidence available on record has quantified the compensation. Though it is the submission of the learned counsel for the appellant that the evidence of P.W.1 has not been corroborated by any independent witnesses, however, it is to be pointed out that no contra evidence has been adduced by the appellant before the Tribunal disputing the evidence of P.W.1. Such being the case, absence of evidence of any independent witness is not fatal to the case of the claimant. The appellant should have been diligent enough in disputing the evidence of the claimant by adducing oral and documentary evidence. In the absence of any evidence by the Transport Corporation, the stand of the appellant that no independent witness has been examined to corroborate the version of the claimant deserves to be rejected.

6. Insofar as the contention of the appellant that there being no documentary evidence to prove the age and income of the claimant, the award passed by the Tribunal is excessive. It is to be pointed out that though the claimant has claimed his income to be Rs.7,000/- per month, however, in the absence of any documentary proof to substantiate the same, the Tribunal has fixed the income of the claimant at Rs.2,000/- per month and adopting proper multiplier, has quantified the loss of earning. Therefore, the said quantification cannot be said to be erroneous and the same is sustained. Insofar as the age of the claimant is concerned, the Tribunal has fixed the age on the basis of the evidence let in by the claimant and the said fixation has not been countered by the appellant before the Tribunal. In such circumstances, it is not open to the appellant herein to question the fixation of age of the claimant by the Tribunal.

7. Insofar as the contention that the Tribunal erred in adopting multiplier method is concerned, the said contention is liable to be rejected for the reason that the claimant sustained fracture in his left hand fingers. The avocation of the claimant being Mason, the Tribunal, taking into consideration the evidence of the doctor, who has deposed about the injuries

sustained by the claimant and the effect that it would have on his earning capacity, has rightly adopted multiplier method for quantification of loss of future earnings. The Tribunal, on the basis of cogent and convincing reason adduced a finding for adoption of multiplier method and the same warrants no interference at the hands of this Court.

8. Therefore, this Court finds no reason to interfere with the award passed by the Tribunal and, accordingly, confirms the same.

9. For the reasons stated above, this Civil Miscellaneous Appeal is dismissed, confirming the Judgement and Decree dated 14.10.2011, made in M.C.O.P.No.459 of 2008, on the file of Motor Accident Claims Tribunal, 1st Additional Subordinate Court, Cuddalore. No costs. Consequently, connected Miscellaneous Petition is dismissed.

10. The appellant/Transport Corporation is directed to deposit the entire award amount, less the amount, if any, already deposited, along with interest as ordered by the Tribunal from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

arr/GLN

To

1. The Motor Accidents Claims Tribunal,
1st Additional Subordinate Court,
Cuddalore.

2. The Section Officer, VR Section,
High Court, Madras. (2 copies)

C.M.A. No.280 of 2017 &
C.M.P.No.2022 of 2017

VGII(CO)

SP(27/03/2018)