

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.04.2017
CORAM:
THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.513 of 2014

M.Venkatachalam

...Appellant (Claimant)

/versus/

The Managing Director,
Tamil Nadu State Transport Corporation,
Vellore - 9.

...Respondent (Respondent)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the Judgment the Decree dated 21.10.2013, made in M.C.O.P.No.155 of 2009 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Ranipet, Vellore District and allow the above Civil Miscellaneous Appeal.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.P.Paramasivadosh

J U D G M E N T

NOOTY.RAMAMOHANA RAO, J.

This Civil Miscellaneous Appeal has been preferred by the claimant, not being satisfied by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Ranipet, Vellore District, in M.C.O.P.No.155 of 2009.

2. The facts which were established before the Tribunal are as follows:

(i) On 6th May 2009, the claimant/appellant was riding a two wheeler bearing Registration No.TN 37 AR 8048, with his sister by name Sangeethalakshmi, as his pillion. The claimant/appellant was in the process of dropping his sister at her College situated at Vaniyambadi in Gudiyatham. Around 7.30 a.m. when the claimant reached Karthikeyapuram Village bus stop, a bus bearing Registration No.TN 23 N1 245, belonged to the Tamil Nadu State Transport Corporation, caused the accident, while trying to avoid ramming into a herd of goats which suddenly entered the road from sideway. The claimant/appellant and his sister, the pillion were both thrown off from the vehicle and they also sustained multiple grievous injuries.

(ii) The injured were initially taken to the Government Hospital at Gudiyatham, thereafter to the Christian Medical College Hospital at Vellore, and again there from to the Government General Hospital at Chennai. Unfortunately, the sister of the claimant/appellant, succumbed to the injuries while receiving treatment on 8th May 2009. The grievous injuries sustained by the claimant/appellant left him paralysed waist down below.

3.The Tribunal has returned a finding of fact that the accident had been caused due to the lack of proper anticipation on the part of the driver of the bus, as he drove the bus rashly and negligently. The respondent/Corporation has not challenged that particular finding of the Tribunal by preferring any Appeal against the Award. In the absence of any material on record to the contra, we affirm the said finding of fact that the accident has been caused wholly due to the rash and negligent driving of the driver of the bus. Further, the driver lacked clear anticipation as, from a distance he could have easily noticed the herd of goats and he should have hence anticipated their sudden entry on to the nearby road. In fact the driver of the bus has been examined by the Corporation by R.W.1. He has admitted that the Police upon investigation, have charge sheeted him for causing the accident and the Corporation has also initiated major disciplinary proceedings against him for his act of rashness in driving the Corporation bus.

4.Perusal of EXs.P3, P4, P5 & P6, would clearly reveal the gravity of the injury and its after effects on the claimant/appellant. EX.P5, the certificate dated 15th July 2009, was issued by MIOT Hospitals in Poonamallee Road, Manappakkam, Chennai. The Neurological examination as on 15th July 2009, reveals that hip down onwards, there was no sensation and there were also no reflexes in both the legs of the claimant/appellant. Thus, there is no pale of doubt that the claimant/appellant has virtually got crippled due to the accident, waist down onwards.

5.The Wound Certificate issued by the Government General Hospital, Chennai, clearly revealed that the claimant/appellant has suffered fracture of L1, D12 with paraplegia. In view of this, EX.P13- Disability Certificate issued by Dr.Riaz Ahmed, Senior Civil Surgeon to Government and Orthopaedic Consultant on 23.03.2012, assessing the percentage of disability as 100%, cannot be seriously doubted. However, even EX.P13 which was got marked by examining Dr.A.Riaz Ahmed-P.W.2, only talks of the paraplegia condition of both the legs of the claimant/appellant, which means that the claimant/appellant has not become paraplegic all over the body and he became immobile as the paraplegic condition is found only waist down onwards.

Therefore, the Tribunal has taken into account the percentage of disability suffered by the claimant/appellant as 70%.

6. We have considered the assessment made by the Tribunal, particularly in the absence of any standard norms for assessment of the disability percentage, to be a fair and reasonable one. Thus, no interference is called for in that regard. The Tribunal has awarded a sum of Rs.1,40,000/- towards loss of earning capacity, by granting compensation at the rate of Rs.2,000/- for every percentage point of disability.

7. Mr. C. Prabakaran, the learned counsel for the appellant has drawn our attention to two specific documents viz. EXs.P9 & P10. EX.P9, is the letter of employment issued by Adecco Company. It offered employment as Service Mechanic for a period of one year to the claimant/appellant from 01.06.2008 upto 31.05.2009. He was chosen by Adecco Flexione Workforce Solution to work at their client's place viz. TTK Prestige Limited, Vellore, on deputation. The basic pay offered was Rs.3,548/- and CTC per month was Rs.4,236/-. After deducting necessary deductions towards contribution to Provident Fund, ESI Corporation and Professional Tax, amounting to a total of Rs.501/- the take home pay was noted as Rs.3,047/-. EX.P10, is the 'Pay Slip' for the month of January 2009. It reflected an increase of one rupee in the ESI contribution by the employee and consequently the total deductions went upto Rs.502/- and the net pay was reflected as Rs.3,046/-. In the 'pay slip' the Provident Fund Account Number, the Bank Account Number and the name of the Bank into which the pay is getting credited, were also furnished. The Pay Slip also described the designation of the claimant/appellant as 'Service Mechanic' and it also reflected that he was deployed to work at their client's place viz. TTK Prestige Limited, Vellore, on deputation. Therefore, EXs.P9 and P10 deserve to be relied upon for the purpose of ascertaining the earnings of the claimant/appellant, at the time of accident.

8. Sri. P. Paramasivadosh, the learned Standing Counsel for the Corporation would submit that EXs.P9 and P10, cannot be trusted, because in EX.P9, Provident Fund Account Number has not been mentioned, while EX.P10-Pay Slip is only a photostat copy and the original has not been produced.

9. In our opinion the objections raised by the learned Standing Counsel for the Corporation are not sustainable. In the offer of employment-EX.P9, there could not have been a Provident Fund Account Number mentioned. Only upon acceptance of the offer of the employment and once the employee start and the employer making contributions, the Employees' Provident Fund Organization would allot a separate Account Number, but, not otherwise. Therefore, EX.P9 could not have contained a separate Provident Fund Account Number in favour of the employee at the

stage of offering him employment.

10. When EX.P10 contained the Employee's Provident Fund Account Number and if the Respondent-Corporation had the slightest of doubt about the genuineness of the said claim, it is for them to have gone to the EPF Organization and get it verified. Since they have not carried out any such exercise, the Corporation is not justified in raising a plea that EXs.P9 and P10, cannot be trusted.

11. That apart, the Scheme of Motor Vehicles Act, particularly, Sections 168 and 169, envisage only summary procedure, to be adopted for the purpose of determining the quantum of compensation payable, because the Tribunal is required to adopt transparent, fair and reasonable procedure. It is virtually the Tribunal which is treating the Motor Accident Claims Original Petitions as Civil Suits and they are almost following the same procedure, as they would have followed while trying Civil Cases. But, Sections 168 and 169 of the Motor Vehicles Act clearly bring out that a Summary Procedure as not only fit and proper and is what is required to be followed by the Tribunal while determining the amount of compensation, which appears to be just and reasonable.

12. Therefore, the non-production of the original copies, but, production of photostat copies of the documentary evidence is not per se objectionable. If the opposite parties have got a doubt to entertain about the genuineness of the photostat copy of any document, they must necessarily take steps for getting the same verified or for summoning the original document. Without taking recourse to any such measures, an objection cannot be raised at the Bar, objecting to place reliance upon such photostat copies of documents. Therefore, we find no merit in the contentions raised by the learned counsel for the Corporation. Going by EX.P10, we can safely conclude that the monthly earnings of the claimant/appellant, at the time when the accident took place was Rs.3,000/-. On that basis, the compensation payable is required to be worked out.

13. As the claimant/appellant is a young person of 22 years at the time of accident, there would have been surely bright prospects in store for him in future. Qualified and competent skill full mechanics are always in demand and are sought after by Industrial Houses/Manufacturing Units. Therefore, it is only reasonable for us to assume that the future prospects in the instant case, in so far as the claimant/appellant is concerned would not have been not less than 50% of his current earnings. In fact, as per the principle enunciated by the Hon'ble Case in SARALA VERMA v. DELHI TRANSPORT CORPORATION [2009 (2) TN MAC 1 (SC)], in paragraph No.24, we have no hesitation to add 25% of the current earnings of Rs.3000/- per month, towards his future

prospects, as Sarala Varma talks of persons in permanent/firm employment, to be awarded 50% towards future prospects.

14. Unfortunately, the Tribunal has awarded a sum of Rs.20,000/- towards pain and suffering undergone by the claimant/ appellant. The evidence on record particularly EXs.P3, P4, P5, reveal the gravity of the injuries sustained by the claimant/appellant. Therefore, the Tribunal ought to have awarded a sum of Rs.50,000/- towards pain and suffering undergone by the claimant/appellant instead of Rs.20,000/-. The Tribunal has not awarded any compensation for the accident ruining the marital prospects. On the other hand, it had awarded a sum of Rs.10,000/- towards loss of amenities. In fact, since the claimant/appellant has become paraplegic waist down, his future matrimonial prospects have been completely ruled out. Hence, on account of loss of amenities, a sum of Rs.50,000/- ought to have been awarded.

15. Let there be a decree drawn re-calculating the compensation amount, taking the monthly earnings of the claimant/appellant as Rs.3,000/- multiplied by 12, multiplied by 17 ($3000 \times 12 \times 17 = 6,12,000$). Thereafter, 70% it works out to Rs.4,28,400/- ($6,12,000 \times 70/100 = 4,28,400/-$). To the said amount, we add 25% towards loss of future prospects. Towards pain and suffering, we award a sum of Rs.50,000/- as against Rs.20,000/-, awarded by the Tribunal. Towards loss of amenities, including future matrimonial prospects, we award a sum of Rs.50,000/-. Rest of the amounts, as awarded by the Tribunal on the other counts, stand as it is.

16. Out of the aforesaid amount, the claimant/appellant shall purchase an Automatic Wheel Chair with battery, which Pikays Medico Surgicals, Anna Salai, Chennai, have agreed to supply Model No.KP10.35 for Rs.95,000/-. The claimant/appellant shall purchase the said Wheel Chair and produce necessary receipt before the Registrar (Judicial) of this Court and then alone the last of Rupees one lakh payable under this decree shall be released to the claimant/appellant. If the claimant/appellant does not produce the bill of purchase of the Wheel Chair, the amount of Rs.50,000/-, awarded by us towards loss of amenities shall not be released and after expiry of six months shall be refunded to the respondent.

Subject to above modifications, the Award passed by the Tribunal is affirmed in all other aspects and the Civil Miscellaneous Appeal stands allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rna/rpa
To

1. The Subordinate Judge,
Motor Accident Claims Tribunal
Vellore District

2. The Section Officer
Madras High Court, Chennai.

copy to

1.The Registrar Judicial
High Court Madras

2.The Section Officer
VR Section High Court Madras

+1 cc to Mr.P.Paramasivados Advocate sr 21503

+1 cc to Mr.C.Prabakaran Advocate sr 21304

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