

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.Nos.2840 and 3185 of 2013
and
M.P.No.1 of 2013

C.M.A.No.2840 of 2013

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai - 600 002. ... Appellant/1st Respondent

versus

1. V.C.Nachiappan
2. N.Muthuraman
3. P.R.Gunasekaran
4. R.Kalimuthu
5. M/s.ICICI Lombard General Insurance
Rep. by its Manager,
Zenith House, Keshavrao Khade Marg,
Mahalaxmi, Mumbai - 400 034.

... Respondents/Respondents 2 to 5
(R2, R3 and R4 are given up)

Appeal filed under Section 173 of the Motor Vehicles Act,
1988, against the Judgment and Decree dated 06.12.2012 passed in
M.C.O.P.No.566 of 2009 on the file of the Motor Accident Claims
Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.P.Paramasivadoss

C.M.A.No.3185 of 2013

V.C.Nachiappan ... Appellant/Claimant

versus

1. The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai - 600 002.
2. N.Muthuraman
3. P.R.Gunasekaran
4. R.Kalimuthu

5. M/s.ICICI Lombard General Insurance
Rep. by its Manager,
Zenith House, Keshavrao Khade Marg,
Mahalaxmi, Mumbai - 400 034.

..Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.12.2012 passed in M.C.O.P.No.566 of 2009 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.M.K.Kabir,
Senior Counsel
for Mr.T.Jayaraman

For R1 : Mr.P.Paramasivados

For R2 and R4 : No appearance

For R3 : Ex parte

COMMON JUDGMENT

The Award was passed for a sum of Rs.2,72,500/- in favour of the claimant/injured/a lawyer of 40 years standing in the Bar, by name, V.C.Nachiappan, who claimed a sum of Rs.7,99,739/- as compensation, in respect of injuries sustained by him in an accident that took place on 27.08.2008.

2. At the time of accident, the claimant/injured was travelling in an Omni Bus, owned by the third respondent, which has been injured with the fifth respondent. It is a case of the claimant that the vehicle belonging to the first respondent (before the Tribunal), now the appellant Transport Corporation, which was driven by the second respondent in a rash and negligent manner, hit the omni bus and thereby caused injuries to the claimant, which resulted in compressed fracture of right fore-hand joint and the rib connecting neck. The injuries over the right leg made him to stand with discomfort in any posture and caused immobility.

3. To prove negligence, the claimant relied upon the first information report apart from the oral evidence of the claimant. There was no contra evidence on the side of the respondents. Even though the allegation was that there was joint and several liability on the part of the Transport Corporation as well as the Omni Bus in the pleadings, the allegation of negligence is made only as against the driver of the Omni Bus in the pleadings as well as in the evidence. The First Information Report has been lodged against the appellant Transport Corporation and charge sheet has also been filed. The Tribunal has considered the evidence available and also noting that the best evidence available has been suppressed by the appellant Transport Corporation, which has made the Corporation liable for the negligence. For the non-examination of the driver on the part of the appellant Transport Corporation, this Court can also draw adverse inference. Therefore, the finding on negligence is confirmed.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The next contention is with reference to the quantum of compensation. The learned counsel for the appellant-Claimant

would point out the duties and responsibilities of the lawyers and contended that the disablement would cause 100% earning capacity and therefore, quantification for loss of earning capacity should have been done using multiplier method.

5. The learned counsel for the appellant Transport Corporation would submit that the injury sustained would not lead to loss of earning capacity and the disablement compensation already awarded is excessive and therefore, it must be reduced.

6. The claimant sustained fracture of neck of humerus, for which, osteosynthesis had been done. There is mal-union of fracture. Implant has been used during the surgery over the right shoulder. It is also stated that implant has been used in the right fore-arm and the bruises over the right leg has resulted in mobility issues. According to the Doctor, this disablement was 50%. At this juncture, considering the age of the claimant (59 years), the issue to be considered is, whether this type of injury would cause loss of earning capacity?.

7. It would be appreciate to consider duties and responsibilities of advocate.

7.1. The Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, adumbrates the duties and responsibilities of lawyers, in the following language:

"12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients."

7.2. Apart from that, with the advancement in age, the capacity to do physical work may decrease, but, so far as mental

work is concerned, it is the opposite of it. Unlike the labourers and laymen, who tend to lose stamina, energy and strength over a period of time and resultant loss of earning capacity, the professionals, like, Chartered Auditors, Consultants and Lawyers are destined to have much brighter prospects, in material terms, as they mature and mellow with advancing years. Therefore, even though it is claimed that the monthly income is Rs.30,000/- and sky may be the ultimate still in the absence of evidence, monthly income is taken at Rs.15,000/-.

7.3. The loss of earning capacity is estimated at 30%, even though the physical disablement is 50%, considering the nature of duties and responsibilities and multiplier method is adopted for quantification of compensation and a sum of Rs.4,86,000/- is awarded towards loss of earning capacity. Correspondingly, the enhancement has been considered only in respect of certain head of claims which is indicated in the tabulation below:

S1 .N o.	Head of claim	Award by Tribunal	Award by the High Court
1.	Loss of income for three months	Rs.45,000/-	Rs.45,000/-
2.	Transportation	Rs.5,000/-	Rs.10,000/-
3.	Extra nourishment	Rs.5,000/-	Rs.10,000/-
4.	Damages to clothes	Rs.1,500/-	Rs.2,000/-
5.	Medical expenses	Rs.63,000/-	Rs.63,000/-
6.	Attendant charges	Rs.3,000/-	Rs.4,000/-
7.	Loss of amenities	Rs.20,000/-	Rs.50,000/-
8.	Pain and suffering	Rs.30,000/-	Rs.30,000/-
9.	Disability of 50% at the rate of Rs.2,000/- per percentage	Rs.1,00,000/-	Rs.4,86,000/- (monthly income at Rs.15,000/-, multiplier 9, 30% loss of earning capacity)
	Total	Rs.2,72,500/-	Rs.7,00,000/-

8. In the result, the award is enhanced from Rs.2,72,500/- to Rs.7,00,000/-. C.M.A.No.2840 of 2013 is dismissed and C.M.A.No.3185 of 2013 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

9. The Transport Corporation shall deposit the entire amount of compensation, less the amount already deposited, if any, along with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this Judgment. The claimant is permitted to withdraw 50% of the award amount along

with interest and cost. 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.

10. It is submitted that the claimant is in urgent need of medical assistance and therefore, this case must be posted for compliance.

11. Post for compliance on 09.10.2017.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai - 600 002.
- 2.The Section Officer,
VR Section, High Court,
Madras-104.

+2cc to Mr.P.Paramasivadoss, Advocate, S.R.No.65547
+1cc to Mr.T.Jayaraman, Advocate, S.R.No.65259

C.M.A.Nos.2840 and 3185 of 2013
and M.P.No.1 of 2013

RSK(CO)
GN(11/09/2017)

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