

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1091 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division) Limited,
No.37, Mettupalayam Road,
Coimbatore-43. Appellant/1st Respondent

..vs..

1.S.Koilraj @ S.Kovilraj1st Respondent/Claimant
2.A.K.Sureshkumar2nd Respondent/Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 04.08.2017 made in MCOP.No.131 of 2016 on the file of the Motor Accident Claims Tribunal/The Special Subordinate Judge, Erode.

For Appellant : Mr.K.J.Sivakumar
Respondent : Mr.R.Nalliyappan for R1

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 04.08.2017 made in MCOP.No.131 of 2016 on the file of the Motor Accident Claims Tribunal/The Special Subordinate Judge, Erode., the present appeal has been filed by the first respondent Transport Corporation to set aside the award passed by the Tribunal.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioner is that on 20.12.2015 at about 03.45 p.m., while the petitioner was travelling as a pillion rider in the two wheeler bearing Registration No.TN.01.L.4953 in Kovai to Mettupalayam Road, while they were going near K.R.

Hospital, the 2nd respondent Transport Corporation bus bearing Registration No.TN-38-N-2292 driven by the first respondent, came at high speed dashed against the two wheeler resulting in the petitioner suffering bone fracture and grievous injuries. The accident occurred only due to the rash and negligent driving of the first respondent driver. The petitioner underwent treatment as in patient from 20.12.2015 to 02.02.2016. The petitioner suffered bone fracture at right thigh and right shoulder and under went operation for the fracture and to rectify the same plate as well as screw were implanted. Subsequently, the petitioner under went plastic surgery also. The petitioner by working as supplier in Hotel was earning a sum of Rs.5,000/- per month. Due to the injuries suffered, he is unable to carry on his normal day today activities. Thus, the petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondents.

4.On the other hand, opposing the claim petition, the second respondent Transport Corporation by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The rider of the two wheeler, in which the petitioner was travelling alone caused the accident. Failure to implead the owner and insurer of the two wheeler bearing Registration No.TN-01-L-4953 is fatal to the case. The age, occupation and monthly income of the petitioner as alleged in the petition is denied. The rider of the two wheeler did not possess valid driving licence. The amount claimed by the petitioner is highly excessive. Thus, the second respondent Transport Corporation sought for dismissal of the petition.

5.Before the Tribunal, the petitioner examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P20 to prove his claim. On the side of the respondents, the driver of the bus deposed as R.W.1 but no document was produced.

6. The Tribunal, on the basis of materials available on record, found the negligence of the respondent bus driver only caused the accident, passed an award for a sum of Rs.8,65,400/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the second respondent Transport Corporation has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant/ 2nd respondent Transport Corporation and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8.The learned counsel appearing for the appellant Transport Corporation contends that the Tribunal failed to consider the evidence of P.W.1 properly and wrongly fixed the permanent disability suffered by the petitioner at 40%. The amount

provided for pain and suffering is highly excessive. The Tribunal ought not to have adopted the multiplier method for calculating the future earning capacity of the petitioner. Thus, the second respondent sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the petitioner/claimant contends that the accident occurred only due to the negligence of the second respondent corporation bus driver and the Tribunal has correctly assessed the damage caused to the petitioner and passed just and fair award, which needs no interference. Thus, the petitioner/claimant sought for dismissal of the appeal.

10. It is only quantum appeal. Both side have not seriously disputed the conclusion of the Tribunal regarding the negligence aspect. The petitioner who deposed as P.W.1 clearly stated that the accident occurred due to the negligence of the First respondent driver only. The police also registered Ex.P1 First Information Report against the First respondent driver only. Thus, the conclusion of the Tribunal, on the basis of Ex.P1 First Information Report, Ex.P2 Observation Mahazar, Ex.P3 Rough Sketch and Ex.P4 Inspector Report and the evidence of P.Ws.1 and 2 that the negligence of the First respondent driver alone caused the accident. In such circumstances, the Tribunal has correctly concluded that the First respondent driver alone is responsible for the accident and the same needs no interference.

11. The petitioner claims that he was aged 19 years and by working as Supplier in the Hotel, was earning a sum of Rs.5,000/- per month. The petitioner further stated that he suffered multiple fracture and injuries and consequently permanent disability. The Doctor, who deposed as P.W.3 assessed the disability suffered by the petitioner as 66.2% and issued disability certificate Ex.P17. Admittedly, P.W.3 did not treat the petitioner. On the basis of personal examination of the petitioner and available medical records P.W.3 concluded that the disability suffered by the petitioner is 66.2%. Since P.W.3 Doctor has not treated the petitioner and no calculation sheet is filed along with Ex.P17 disability certificate, the Tribunal fixed functional disability is suffered by the petitioner as 40% which is on the basis of available evidence is just and correct. The Tribunal compensated the petitioner at the rate of Rs.3000/- per percentage. This, the appellant transport corporation contends is highly excessive and to set aside the same. As the accident occurred in the year 2015 and for the reasons stated above, it will be appropriate to compensate him at the rate of Rs.2000/- per percentage instead of Rs.3000/- awarded by the Tribunal. As such, the disability compensation calculated as follows. $40\% \times \text{Rs.2,000/-} = \text{Rs.80,000/-}$.

Therefore, the sum of Rs.1,20,000/- given by the Tribunal as permanent disability compensation is hereby reduced to Rs.80,000/-. The Tribunal fixed the monthly income of the petitioner at Rs.6,500/-, but, there is no proof for the same. As such, the monthly income of the petitioner is fixed at Rs.5,000/- and 40% functional disability is to be compensated by adopting multiplier 18. As such, the loss of future income is calculated as follows:-

$\text{Rs.5,000/-} \times 12 = \text{Rs.60,000/-} \times 40\% = \text{Rs.24,000/-} \times 18 = \text{Rs.4,32,000/-}$.

Considering the nature of injuries suffered by the petitioner, the petitioner could not have attended to his regular work atleast for a period of three months while taking treatment. Thus, the loss of income during treatment period is calculated as follows. $\text{Rs.5000/-} \times 3 = \text{Rs.15,000/-}$. Hence, a sum of Rs.19,500/- given by the Tribunal towards loss of income during treatment period is reduced to Rs.15,000/-. The Appellant contends that the Tribunal awarded a sum of Rs.1,00,000/- towards pain and sufferings and the same is on the higher side. The said contention is justifiable. However, considering the fact that the petitioner has suffered fracture as well as multiple grievous injuries and took treatment as inpatient for a long time, he would have suffered pain and sufferings. As such, it will be appropriated to compensate him by granting Rs.50,000/- towards pain and sufferings instated of Rs.1,00,000/- given by the Tribunal. The amount awarded by the Tribunal under the other heads are hereby confirmed. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income during treatment period	19,500.00	15,000.00
2.	Transport Expenses	2,000.00	2,000.00
3.	Extra nourishment	9,500.00	9,000.00
4.	Damage for cloths	500.00	500.00
5.	Medical Expenses	52,800.00	52,800.00
6.	Pain and sufferings	1,00,000.00	50,000.00
7.	Disability	80,000.00	80,000.00
8.	Loss of earning power	5,61,400.00	4,32,000.00
	Total	8,65,400.00	6,41,300.00

Accordingly, a sum of Rs.8,65,400/- awarded by the Tribunal is modified and the same is reduced to Rs.6,41,300/-.

12. In the result, this appeal is partly allowed. No costs. The amount of Rs.8,65,400/- awarded by the Tribunal dated 04.08.2017 made in MCOP.No.131 of 2016 on the file of the Motor Accident Claims Tribunal/The Special Subordinate Judge, Erode is hereby reduced to Rs.6,41,300/-. The appellant Transport Corporation is directed to deposit the entire Award amount of Rs.6,41,300/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The Appellant-Transport Corporation is entitled to withdraw the excess amount, if any paid. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

rrg

To

The Special Subordinate Judge,
Motor Accident Claim Tribunal,
Erode.

+1 CC to Mr.K.J. Sivakumar, Advocate sr 41320.
+1 CC to Mr.R. Nalliyappan, Advocate sr 41224.

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C.M.A.No.1091 of 2018

KGK(CO)
SP(30/07/2018)

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