

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1173 of 2018
and CMP.No.9716 of 2018
and CMA.No.1269 of 2018

C.M.A.No.1173 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Limited
No.3/137, Salamedu, Vazhudareddi,
Villupuram. ...Appellant/1st Respondent

Vs

1. J.Prem Kumar ...1st Respondent/Claimant
2. R.Nagarajan
3. Sri Ram General Insurance Company limited
2nd Floor, City Centre,
No.66, Thirumala Pillai Road,
Near Vanimahal, T.Nagar,
Chennai. ... Respondents No.2 & 3/
Respondents 2 & 3

PRAYER : Civil Miscellaneous Appeal filed against the
award and decree dated 28.03.2017 made in MCOP.No.4220 of 2014
on the file of the Motor Accidents Claims Tribunal, (I
Additional Sub Judge, Cuddalore) Cuddalore District.

For Appellant : Mr.S.Sairaman

For Respondents : Mrs.Ramya Rao for R1
R2 & R3 set exparte before Tribunal

CMA.No.1269 of 2018

J.Prem Kumar ... Appellant/Claimants

Vs

1. The Branch Manager TNSCTC,
3/137, Salamedu, Vazhuthareddy,
Villupuram.

2. R.Nagarajan

3. Shriram General Insurance Co.Ltd.,
2nd Floor, City Centre, 66,
Near Vani Mahal, T.Nagar,
Chennai 600 017.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the award and decree dated 28.03.2017 made in MCOP.No.4220 of 2014 on the file of the Motor Accidents Claims Tribunal at Chennai (I Additional Sub Judge, Cuddalore) Cuddalore District.

For Appellant : Mrs.Ramya Rao

For Respondents : Mr.S.Sairaman for R1
R2 & R3 set exparte before Tribunal

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

The appellant/Transport Corporation has preferred the present appeal in CMA.No.1173 of 2017 and claimant has filed CMA No.1269 of 2018 against the order of Motor Accident Claims Tribunal, I Additional Sub Judge, Cuddalore, Cuddalore District in MCOP No.4220 of 2014 dated 28.03.2017.

2. Heard Mr.S.Sairaman, the learned counsel appearing for the appellant/Transport Corporation (herein after called as appellant or Transport Corporation) and Mrs.Ramya Rao, the learned counsel appearing for the first respondent (herein after called as claimant or first respondent).

3. The brief facts of the case are as follows:-

On 25.09.2014 at about 4:10 a.m. while the petitioner was travelling in the first respondent's vehicle bearing Reg.No.TN-23-N-2160 TNSTC bus on Chennai - Hosur N.H.road, near Ayyanur over bridge, the driver of the vehicle drove it at a very high speed in a rash and negligent manner, without making any horn and without following the traffic rules and regulations and hit behind the second respondent's vehicle bearing Reg.No.KA-54-0159 lorry and caused the accident. Due to the accident the petitioner sustained grievous injuries and multiple fractures all over his body and head. He was immediately admitted in Government Medical College Hospital, Vellore and then transferred to JIPMER Hospital, Puducherry for advanced treatment. His right leg was amputated and till the date of filing the claim petition the petitioner was undergoing treatment at private hospitals. The accident was only due to the rash and negligent act of the bus driver bearing Reg.No.TN-23-N-2160 TNSTC. For abandon caution the owner and the insurer of the accident involved vehicle were impleaded as second and third respondents. The petitioner was hale and healthy at the time of accident and he was only 21 years old and was working as Computer Engineer and earning RS.20,000/- per month.

4. The Transport Corporation filed its counter stating that the driver of the bus drove the vehicle with due care and caution by observing the traffic rules, therefore there was no negligence on the part of the driver of the bus. According to the appellant/Transport Corporation, the accident occurred only due to the negligent driving of the driver of the lorry bearing Reg.No.KA-54-0159. Further, the Transport Corporation did not admit the income of the injured and also the medical treatment taken by the injured in the private hospital. The appellant's vehicle was insured with the third respondent Insurance Company.

5. The Tribunal after considering pleadings and evidences came to the conclusion that the accident occurred due to the negligent driving of the driver of the bus bearing Registration No.TN-23-N-2160 TNSTC.

6. The Tribunal awarded a sum of Rs.35,62,950/- as compensation to the claimant against the claim amount of Rs.50,00,000/- aggrieved over the said findings and award both the claimant as well as appellant/Transport Corporation have come forward with the present appeal.

7. Now the point for consideration in the present appeal is as follows:-

1. Whether the negligence fixed by the Tribunal on the part of the driver of the Transport Corporation bus is just and fair?

2. Whether the compensation fixed by the Tribunal is just and fair?

7.1.1. On behalf of the claimant PW1 was examined and exhibits Ex.P.1 to Ex.P.13 were marked. The first respondent Transport Corporation also cross examined PW1. However, the first respondent Transport Corporation did not examine any evidence and also not marked any document. Court also marked Ex.C.1. The claimant was examined as PW1 and he deposed that on 25.09.2014 around 4:10 a.m. he was travelling in the Transport Corporation bus bearing Reg.No.TN-23-N-2160 TNSTC from Chennai to Hosur N.H. road, near Ayyanur over bridge, the driver of the bus drove it in a very high speed in a rash and negligent manner without making any horn and without following the traffic rules and regulations and hit behind the second respondent's vehicle bearing Reg.No.KA-54-0159 lorry and caused the accident. Ex.P.1, FIR dated 25.07.2014 was marked through PW1 and the complaint was filed by one R.Selvaraj. On that basis FIR was filed and in the FIR it was clearly narrated about the accident. Motor Vehicle Inspection report marked through PW1 as Ex.P2 and Motor Vehicle Inspection report clearly states that there was no engine fault and the driver of the bus had valid license at the time of accident.

7.1.2. In view of the PW1 eye witness deposition and the narration of the incident in the FIR, it clearly shows

that the accident occurred due to the negligence on the part of the driver of the bus. To substantiate the Transport Corporation's contention they have not examined any witness or not marked any document on their behalf. However, no eye witness was examined on behalf of the Transport Corporation. Further the appellant failed to mark any document in support of their contention. Therefore, it was proved beyond doubt that the negligence was only on the part of the driver of the bus. The contention of the appellant/Transport Corporation is that the negligence was on the part of the driver of the lorry, which cannot be accepted and also not proved by the respondent by way of any oral or documentary evidence. Hence we have no hesitation to hold that the negligence is only on the part of the driver of the bus and the Tribunal also rightly came to the conclusion that the negligence was on the part of the driver of the bus bearing Reg.No.TN-23-N-2160 TNSTC. Accordingly question no.1 is answered as above.

7.2.1. The second issue to be decided in this case is the quantum of compensation fixed by the Tribunal. Both the appellant as well as the claimant challenge the quantum of compensation awarded by the Tribunal. According to the appellant, the quantum of compensation fixed on various heads is too high and therefore the said quantum fixed by the Tribunal shall be reduced.

7.2.2. PW1 was examined and Ex.P.3, Accident Registrar was marked. As per the Accident Registrar the age of the claimant was mentioned as 25 years at the time of accident. Further Ex.P.10 B.E., degree certificate, Ex.P.11 Diploma Certificate, Ex.P.12 National level Seminar Certificate and Ex.P.13 National level event certificate were also marked and states that the claimant age was 25 years. Further, Court also referred the claimant to the Medical Board Department to assess his disability and the said document was marked as Court Ex.C.1. In the said Medical Board Certificate the medical board determined the claimant's disability as 76% permanent physical impairment in relation to his whole body. Due to the said accident the claimant sustained right leg post traumatic below knee amputation, Nasal bone fracture, spinal cord injury and grievous injuries and multiple fractures all over his body and head. With the below knee amputation it is very difficult for the claimant to maintain his family without employment. After the perusal of Ex.C.1 and the judgment of this Hon'ble Court reported in 2013(2) TNMAC 583, National Insurance Co.Ltd., Vs G.Ramesh, the Tribunal fixed the disability as 85% to determine the compensation to the petitioner. However, we also concur with the findings of the Tribunal in this regard.

7.2.3. The Tribunal has wrongly taken the multiplier as "13". In the light of the reported decision in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, for the age group between 21 to 25 years old, the multiplier to be adopted is

'18'. The appellant Insurance Company also rightly pointed out that the multiplier for the aforesaid age group of 21 to 25 as "18".

7.2.4. The Tribunal has failed to apply future prospects. Therefore we decided to add 40% towards future prospects as held by the Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. The appellant Insurance Company also rightly pointed out that no future prospects was added by the Tribunal.

7.2.5. Income:- PW1 deposed that he was drawing Rs.20,000/- per month, however he failed to produce any supporting document in this regard. Therefore on the above circumstances, the Tribunal fixed the notional income as Rs.10,000/- for the purpose of determination of compensation to the claimant. However fixing Rs.10,000/- for a B.E., graduate is very low, for the accident held during the year 2014. In the case of the Hon'ble Supreme Court in V.Mekala Vs M.Malathi & another, reported in 2014 (2) TNMAC 6 (SC), the Supreme Court fixed the income of a XI Std student as Rs.15,000/- p.m. for the accident occurred during the year 2005. However, the Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459 case, fixed the monthly notional income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. At that point of time, the Supreme Court would have considered the notional income of the engineering student as Rs.8500/- adding Rs.2000 with Rs.6500/-. In the present case we have taken the notional income of the injured as Rs.8500/- during the year 2008, the petitioner is an Engineer and subsequently depending upon the inflation and price raise, it is just and fair to increase the notional income of the petitioner correspondingly. In the case of the Government employees the Government is increasing the Dearness Allowance every year based on the consumer price index. In the case of the private employees also the Management keeps on increasing by way of increment every year. Therefore, based on the consumer price index issued by the Government of India it is just and necessary to provide appropriate weightage to increase the notional income of the petitioner correspondingly. Even in the case of no fault liability under Section 163 (A) (3) of the Motor vehicles Act, 1988, mandates the Central Government to revise Schedule II, keeping in view the cost of living from time to time. Therefore, it would be proper to apply the consumer price index in the present case to determine the notional income of the injured.

7.2.6. Therefore, the notional income of an Engineering student during the year 2008 would be as Rs.8,500/- as base income for the year 2008 and applied the cost inflation index which is 75% of consumer price Index of previous year as issued by the Central Board for Direct Taxes

and the income of the petitioner based on consumer price Index is as follows:-

$$\begin{array}{rcccl} & \text{Cost Inflation Index} & & & \\ & \text{for the year 2014-2015} & & & \\ \text{Rs.8500/-} & \times & \frac{\text{Cost inflation index for ---}}{\text{the year 2008-2009}} & \times & 100 = \text{Rs.19854/-} \\ & & 75 & & \end{array}$$

$$\text{Rs.8500/-} \times 240 / 137 \times 100/75 = \text{Rs.19854/-}$$

Therefore as per the above calculation, the monthly notional income of the injured will be Rs.19,854/-.

7.2.7. The monthly income of the injured would be Rs.19854/-. Adding a component of 40% (Rs.7941/-) for future prospects, the income would stand at Rs.27,795/- (19854 + 7941). Applying the multiplier of '18' and disability as 85%, the total loss of income per annum would work out to Rs.51,03,162/- = (27795 x 12 x 18 x 85%).

7.2.8. The Tribunal awarded a sum of Rs.3,00,000/- for loss of amenities, since we feel it is too high and therefore we reduce it to Rs.2,00,000/-.

7.2.9. The Tribunal awarded a sum of Rs.1,00,000/- towards Loss of Marital life and Rs.25,000/- towards extra nourishment, since we feel it is too low and therefore we re-fix the same as Rs.2,00,000/- and Rs.50,000/- respectively. The Tribunal awarded Rs.5,00,000/- towards "mental agony", however we feel it is too high and inclined to reduce it to Rs.1,00,000/-.

7.2.10. The Tribunal awarded Rs.2,00,000/- towards pain and suffering, Rs.25,000/- towards transportation, Rs.1,000/- towards damages to cloth, Rs.25,000/- towards attender charges, Rs.10,950/- towards medical expenses, Rs.3,00,000/- towards artificial limbs. Since this Court is of the view that the said amounts awarded are just and proper we confirm the same. In so far as the amount awarded by the Tribunal towards "loss of income during treatment period 24 months" is concerned, this Court is not inclined to confirm the same. Accordingly the same is set aside.

7.2.11. Hence the total compensation payable to the claimant is as follows:-

Head	Amount (Rs.)
Permanent Disability	Rs.51,03,162/-
Pain & suffering	Rs.2,00,000/-
Loss of marital life	Rs.2,00,000/-
Transportation	Rs.25,000/-

Head	Amount (Rs.)
Extra nourishment	Rs.50,000/-
Damages to clothing	Rs.1,000/-
Attendar charges	Rs.25,000/-
Medical expenses	Rs.10,950/-
Loss of amenities	Rs.2,00,000/-
Artificial limps	Rs.3,00,000/-
Mental agony	Rs.1,00,000/-
Total	Rs.62,15,112/-

8. The Transport Corporation is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of one week thereon.

9. In the result the CMA.No.1173 of 2018 is dismissed and CMA.No.1269 of 2018 is partly allowed and the award passed by the Tribunal to the tune of Rs.35,62,950/- is enhanced to Rs.62,15,112/-. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

To

- 1 The Motor Accidents Claims Tribunal,
I Additional Sub Judge, Cuddalore, Cuddalore District.
- 2 The Managing Director,
Tamil Nadu State Transport Corporation Limited
No.3/137, Salamedu, Vazhudareddi, Villupuram.

+1 cc to Mr.Sairaman, Advocate SR.No.44380

+1 cc to MR.A.N.VISWANATHAN RAO, Advocate SR.No.45423

C.M.A.No.1173 of 2018
and CMP.No.9716 of 2018
and CMA.No.1269 of 2018

NRI (CO)