

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1021 of 2015 and
Cross Obj.61 of 2018

CMA.No.1021/2015

The Managing Director,

Tamil Nadu State Transport Corporation (VPM) Limited.,
Vandavasi Depot, Vandavasi,
Kancheepuram Region,
Kancheepuram ... Appellant/ Respondent

-Vs-

S.Sarathi ... Respondent/ Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.06.2012 made in M.C.O.P.No.2278 of 2006 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.

Cross Objection No.61 of 2018

S.Sarathi ... Cross Objector

-Vs-

The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Limited.,
Vandavasi Depot, Vandaasi,
Kancheepuram Region,
Kancheepuram. ... Respondent

Cross Objection filed under Order 41, Rule 22 of Code of Civil Procedure, 1908, seeking to enhance the award amount from Rs.4,41,218/- to Rs.12,00,000/- with interest and Costs in M.C.O.P.No.2278 of 2006 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court at Chennai.

For Appellant : Mr.K.J.Sivakumar
Appellant in CMA and
Respondent in Cross Obj.

For Respondent : M/s.M.A.Rua
Respondent in CMA and
Cross Objector in Cross Obj.

JUDGMENT

Aggrieved the decree and judgment dated 05.06.2012 passed in M.C.O.P.No. 2278 of 2006 by the Motor Accidents Claims Tribunal, VI-Small Causes Court at Chennai , the appellant State Transport Corporation has filed the appeal, and the claimant have filed the Cross Objection in the appeal for Seeking enhancement.

2.For convenience, the parties are referred to as per their array in the claim petition.

3.It is the case of grievous injury suffered by the injured claimant, who was travelling as pillion rider in a bike bearing registration No. TN-21-E-4293 near A.P.Chatram, Opposite to BDO Office, the transport corporation bus driver driven the bus in rash and negligent manner and hit against the bike, due to which injured claimant sustained injuries and filed claim petition at the time of accident he was working as Office Assistant in Esteem Technologies Pvt. Ltd.

4.Resisting the claim petition, the appellant has filed the counter stating that the accident took place only due to the carelessness and negligent act of the rider of two wheeler. The driver of the bus was not at all responsible for the accident and therefore, the appellant is not liable to pay the compensation.

5.Before the Tribunal, on the side of the respondent/claimant 3 witness have been examined as PW-1 to PW-3 and Exs.P1 to P14 were marked. On the side of the appellant/transport corporation no oral or documentary evidence let in.

6.Upon consideration of the oral and documentary evidence, the Tribunal held that the accident happened due to rash and negligent driving of the respondent transport driver and held that the respondent liable to pay the compensation. Based on the pleadings and evidences the learned tribunal awarded total compensation of Rs.4,41,218/- Aggrieved by the negligence and compensation awarded by the Tribunal, the appellant has filed the appeal. Not satisfied with the award of compensation the respondent have filed the Cross Objection.

7. In so far negligence aspect is concerned the learned counsel for the appellant submitted that while fixing the negligence against the driver of the appellant bus, the Tribunal taken that mere registering FIR against driver will not amount fix entire negligence without examine any independent evidence. He would further submit without any basis, the Tribunal has taken the monthly income of the deceased at Rs. 4,500/- and that the total compensation awarded by the Tribunal is highly excessive.

8. Per contra, the learned counsel for the respondent/cross objector submitted that the FIR was register against the corporation bus Driver as per EX.P-1, charge sheet also laid against driver of bus as per EX.P-3, moreover to disprove the same the appellant not let any oral or documentary and any independent evidence, moreover they are well aware of claim proceeding and they may atleast examine the offending driver alone to disprove the same, instead doing that they fail to do. Hence finding of tribunal regarding negligence is correct and does not warrant any interfere by this court.

9. Upon hearing both side and perusal of record and appreciation of oral and documentary evidence, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the appellant bus. I do not find any error in the award of the Tribunal fastening negligence on the part of the driver of the appellant bus. Hence, this Court is of the view that the Tribunal was right in fastening the entire negligence on the part of the driver of the appellant bus and same hereby confirmed.

10. As far as quantum of compensation awarded by the Tribunal is concerned, according to the appellant is the quantum of compensation excessive and not warranted the multiplier method and seeking reduction of compensation.

11. Per contra, the Learned Counsel for Respondent / cross objector strongly contented that, the tribunal without assigning any valid reason reduced percentage of disability from 60% to 20% and moreover considering the nature of injury the tribunal rightly adopt multiplier method, but award amount by tribunal is meager and pray for enhancement of compensation and also submitted that as per Ex.P. 5 to 30, it would shows the nature of injury sustained by the claimant is grievous in nature and he underwent different surgery and fixation of K-wires and he also admit as inpatient for more than 3 spells (i.e) 14.05.2006 to 05.02.2007, 14.12.2007 to 19.12.2007 and

24.01.2008 to 29.01.2008, for more than 10 months, to prove the Permanent disability the doctor was examined as PW-3 he also deposed the nature of injury sustained by the claimant and assessed the permanent disability of 60% and pray for enhancement.

12.I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

13.On appreciating the entire evidence, it seen that he suffered Supracondylar fracture of right femur and mal union of bones and shortening of right leg being Office assistant/Manual labor definitely the injuries will affect the avocation and doctor assessed disability of 60% however tribunal taken reduced into 20% without any valid reason, hence considering facts and circumstance of case this court fix disability of 40% as functional disability and thus, the future loss of earning capacity worked out as $\text{Rs.4,500/-} \times 12 \times 16 \times 40/100 = \text{Rs.3,45,600/-}$ instead of tribunal granted a sum of Rs.1,72,800/- .

14.The Counsel for respondent draw the attention of this court that as per the Ex. P-11 to 26 the respondent spent a sum of Rs.1, 64,218/- towards medical expenses and the same is confirmed.

15.That the tribunal failed to consider that as per the evidence of PW1 he was inpatient for more than 10 months and in different hospitals in different spells and underwent several surgeries and thereafter taking treatment in continues which was clearly proved through the medical records, therefore this court considering the pain and agony suffered by the injured claimant, it is deem fit to enhancing as a sum of Rs. 40,000/-to a sum of Rs.1,00,000/- granted by tribunal under the head of pain and suffering and mental agony.

16.As per the medical records, it revealed that the injured was hospitalized more than 10 months and in different hospitals in different spells and the Tribunal failed to reasonable amount under transport to hospitals, it is deem fit to enhancing as a sum of Rs.10,000/-to a sum of Rs.25,000/- granted by tribunal under the head of transportation. As rightly pointed by the Learned counsel for the respondent that considering the prolong treatments and nature of injuries the amount of Rs.7,000/- awarded under head of extra nourishment is very low and same has been enhanced to Rs.10,000/- and with regard to damage of cloths and articles the sum of Rs.500/- awarded is hereby confirmed.

17. The tribunal awarded a sum of Rs.41,700/- toward loss of income during period of treatment and same hereby confirmed and a sum of Rs.5,000/- granted under head of amenities it is deem fit to enhancing as a sum of Rs.25,000/-. Thus, award tribunal modified and enhanced as follows:-

Sl.No.	Head	Amount awarded by this Court
1	Loss of future earning capacity (Rs.4,500/- X 12 X 16 X 40/100)	Rs.3,45,600/-
2	Pain and suffering and mental agony	Rs.1,00,000/-
3	Loss of amenities	Rs. 25,000/-
4	Extra Nourishment	Rs. 10,000/-
5	Medical bills	Rs.1,64,218/-
6	Damage towards cloth and articles	Rs. 500/-
7	Transport to Hospitals	Rs. 25,000/-
8	Loss of income during the treatments	Rs. 41,700/-
	Total	Rs.7,12,018/-

18. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, the cross objection filed by the respondent/claimant is partly allowed with proportionate costs. The compensation of Rs.4,41,218/- awarded by the Tribunal is enhanced to Rs.7,12,018/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and the appellant is directed to deposit enhanced amount within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the Respondent/claimant is permitted to withdraw enhanced award amount with accrued interest on filing application before the Tribunal, less amount if already withdrawn. Consequently, connected miscellaneous petition is closed.
Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Motor Accident Claims Tribunal,
vi Small Causes Court,
Chennai.

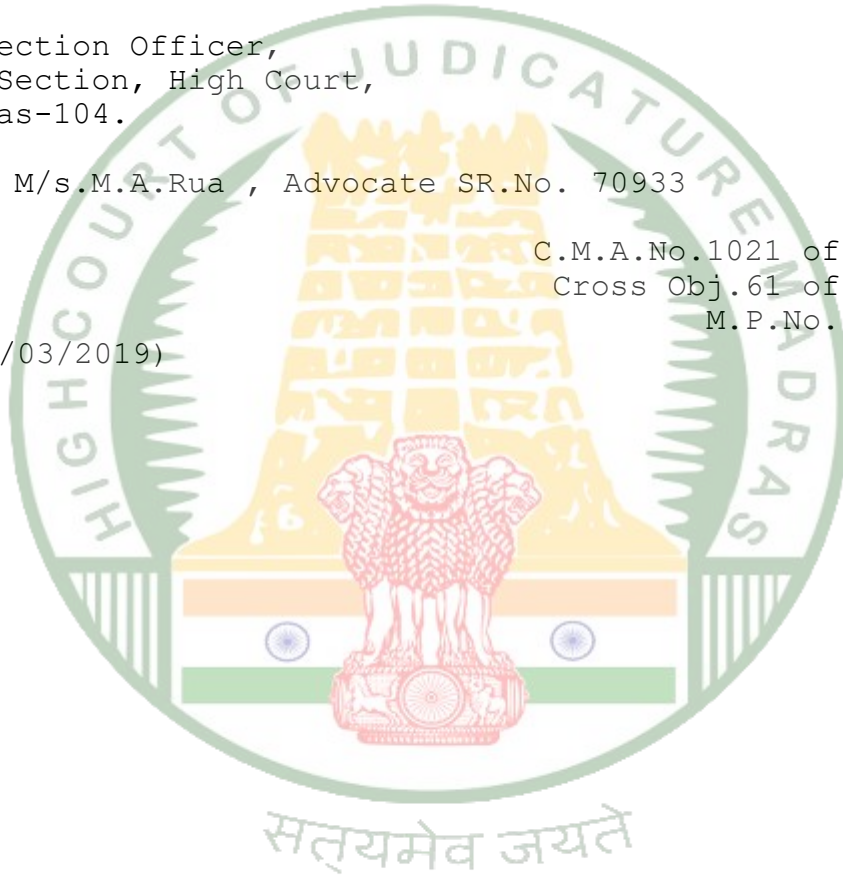
2.The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Limited.,
Vandavasi Depot, Vandavasi,
Kancheepuram Region,
Kancheepuram

3.The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to M/s.M.A.Rua , Advocate SR.No. 70933

C.M.A.No.1021 of 2015 and
Cross Obj.61 of 2018 and
M.P.No.1 of 2015

A.SK(22/03/2019)



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