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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2412 of 2015
and M.P.No.1 of 2015

The Managing Director
TNSTC
Sheikpet Nadu Street
Kanchipuram & Taluk & District

... Respondent/Appellant

vs.

Asok @ Asokan

...Petitioner/Respondent

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.02.2013 made in M.C.O.P.No.269 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court at Chengalpattu.

For Appellant : Mr.K.J.Sivakumar

For Respondent : M/s.K.Vasanthala Mala
for M/s.U.M.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award dated 01.02.2013 made in M.C.O.P.No.269 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub Court at Chengalpattu.

2.The respondent is claimant in M.C.O.P.No.269 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub Court at Chengalpattu. He has filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.08.2006.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the driver of the bus belonging to the appellant/Transport Corporation is responsible for the



accident and directed the appellant to pay a sum of Rs.9,99,923/- as compensation to the respondent.

4. Against the said award dated 01.02.2013 made in M.C.O.P.No.269 of 2008, the appellant/Transport Corporation has come out with the present appeal challenging the negligence fixed on the part of the driver of the bus as well as quantum of compensation.

5. The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal erred in fixing negligence on the part of the driver of the bus. The Tribunal ought to have seen that it is the rider of the two wheeler, in which the respondent was travelling as a pillion rider, came and dashed against the bus and caused the accident. The multiplier method adopted by the Tribunal is not correct in granting compensation for 100% disability. The Tribunal ought to have awarded compensation on percentage basis. P.W.2/Doctor has certified that the respondent suffered only 75% disability and the amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

6. Per contra, the learned counsel appearing for the respondent contended that the respondent has suffered 100% disability as his right hand is totally immobilised and he cannot do any work by using his right hand. The Tribunal considering the ratio in the judgment of this Court as well as the Honourable Apex Court, has rightly applied multiplier method in granting compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant/Transport Corporation as well as the learned counsel for the respondent and perused the materials available on record.

8. The contention of the learned counsel for the appellant that the rider of the two wheeler, in which, the respondent was travelling as a pillion rider, is responsible for the accident, is contrary to the evidence on record. The respondent has pleaded that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant and deposed to that effect. F.I.R. is registered only against the driver of the bus. The Tribunal considering the evidence of P.W.2/Doctor and Ex.P1/F.I.R. Copy, did not accept the evidence of R.W.1 and held that the accident occurred only due to the rash and negligent driving by the driver of the appellant/Transport Corporation. There is no error in the said findings warranting interference by this Court.

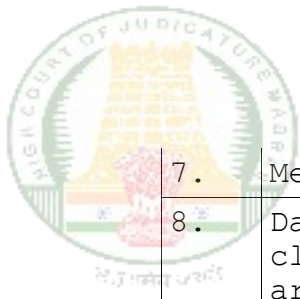


9. As far as quantum of compensation is concerned, from the material on records, it is seen that P.W.2/Doctor has certified that the right hand of the respondent is totally affected and he is doing the work only by using his left hand. His ability to do work is reduced permanently and Doctor certified 75% permanent disability. In view of the same, the Tribunal has awarded compensation towards loss of earning capacity by adopting multiplier method. The Tribunal considering the evidence with regard to income of the respondent, fixed notional income of the respondent at Rs.4,500/- per month, adopted multiplier of 15 and awarded compensation for 100% disability instead of 75% as the Doctor has certified that the ability of the respondent to do work is reduced permanently. The reasoning of the Tribunal for granting 100% disability is erroneous. The respondent is aged 41 years at the time of the accident. As per the judgment of the Honourable Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier is only 14. Thus, the loss of earning capacity is arrived as follows:

$$\text{Rs.4,500/-} \times 12 \times 14 \times 75/100 = \text{Rs.5,67,000/-}$$

The amounts awarded under the heads of pain and suffering and loss of amenities are excessive and the same are reduced from Rs.75,000/- to Rs.50,000/- and from Rs.75,000/- to Rs.25,000/- respectively. The amounts awarded by the Tribunal under all the other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	8,10,000	5,67,000	reduced
2.	Pain and suffering	75,000	50,000	reduced
3.	Extra nourishment	20,000	20,000	confirmed
4.	Attendant charges	2,000	2,000	confirmed
5.	Loss of basic amenities	75,000	25,000	reduced
6.	Transportation	5,000	5,000	confirmed



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7.	Mental agony	5,000	5,000	confirmed
8.	Damage of clothing and article	900	900	confirmed
9.	Medical expenses	7,023	7,023	confirmed
	Total	9,99,923	681923	Reduced by Rs.3,18,000/-

10. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.9,99,923/- awarded by the Tribunal is hereby reduced to Rs.6,81,923/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Transport Corporation is directed to deposit the modified award amount with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/respondent is permitted to withdraw the award amount with accrued interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Transport Corporation is permitted to withdraw the excess amount, if any lying in deposit to the credit of M.C.O.P.No.269 of 2008. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

kj

To

1.The Motor Accident Claims Tribunal,
Principal Subordinate Judge
Chengalpattu.

2.The Record Keeper,
V.R.Section,
High Court, Chennai.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.80379

C.M.A. No.2412 of 2015
and M.P.No.1 of 2015

PVS (CO)
GMY (23/10/2019)