

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.201 of 2016
and CMP.No.1729 of 2016
and Cross Objection No.92 of 2016
and CMP.No.342 of 2017

CMA.No.201 of 2016:-

The Managing Director
Tamil Nadu State Transport Corporation
Limited, Kumbakonam Division-1 Ltd.,
Railway Station New Road,
Kumbakonam ..Appellant/Respondent.

vs

Mohammed Raffiyudeen ..Respondent/Claimant

Cross Objection No.92 of 2016:-

M.Mohammed Raffiyudeen ..Cross Objector

Vs

The Managing Director
Tamil Nadu State Transport Corporation
Limited, Kumbakonam Division-1 Ltd.,
Railway Station New Road,
Kumbakonam ..Respondent

Prayer in both CMA and Cross Objection:- Civil Miscellaneous
Appeal and Cross Objection filed against the order and decree
dated 15.06.2015 made in M.C.O.P.No.1834 of 2010 on the file of
Motor Accident Claims Tribunal, Special Subordinate Court,
Cuddalore.

For appellant in CMA/
respondent in Cross Objection : : Mr.D.Venkatachalam

For Respondent in CMA/
Cross Objector
in Cross Objection : : M/s.A.N.Viswanatha Rao

COMMON JUDGMENT

The Appellant in CMA is the Transport Corporation and the Cross Objector is the claimant/injured Petitioner have filed the above appeal and cross objection, challenging the order and decree dated 15.06.2015 made in M.C.O.P.No.1834 of 2010 on the file of Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 01.08.2010 at about 1.00 p.m., while the petitioner was riding his motor cycle bearing Reg.No.TN-51-Q-3539 at Vilandhidasamuthiram, the respondent bus bearing Reg.No.TN-49-N-1485 came at high speed, dashed against the two wheeler of the petitioner, causing him multiple fracture and grievous injuries all over the body. According to the Petitioner, the accident occurred only due to negligence of the respondent bus driver. The Petitioner was admitted in G.H., Sirkali and continued to undergo treatment in Private Hospital. The Petitioner was aged 20 years and was studying in Muthiya Polytechnic, Chidambaram and that due to accident, he is not able to concentrate in his studies, sports and other extra curricular activities. Thus, the Petitioner sought for a sum of Rs.25,00,000/- as compensation from the respondent.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the respondent/Transport Corporation contends that the accident occurred only due to negligence of the Petitioner who drove the vehicle without valid driving licence. The respondent was proceeding at normal speed and as it approached Vilandhidasamuthiram, the two wheeler tried to overtake the bus and lost control and dashed against the front right side corner of the bus resulting in the accident. The owner and insurer of the two wheeler are not added to the Proceedings and the Petitioner is bad for non-joinder of necessary parties. The claim of the Petitioner about injury suffered, age and other averments are denied. The claim of the petitioner is exorbitant. The respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1, the medical experts as P.W.2 and P.W.3 and produced documents Ex.P.1 to Ex.P.14. On the side of the respondent, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record, found that the negligence of the bus driver alone caused the accident, passed an award for a sum of Rs.5,19,291/- payable by the respondent to the Petitioner.

5. Being aggrieved over the finding of the Tribunal, the respondent/Transport Corporation has come forward with the appeal, whereas, being not satisfied with the quantum of the award, the Cross Objector/claimant has come forward with Cross Objection.

6. The learned counsel for the appellant/Transport Corporation contends that the Tribunal failed to appreciate the documents properly and wrongly fixed the negligence on the respondent bus driver. The Tribunal ought not to have fixed the disability at 45%. The doctors who deposed as P.W.2 and P.W.3 have not assessed the disability properly. The award passed by the Tribunal is highly excessive. Thus, the respondent/Transport Corporation sought for setting aside the award passed by the Tribunal by entertaining the appeal.

7. On the other hand, the learned counsel for the Petitioner/injured claimant contends that the accident occurred only due to negligence of the bus driver and the Tribunal after holding that the respondent bus driver's negligence alone caused the accident, passed the award for a very nominal amount. The Tribunal went wrong in reducing the disability without any basis, ignoring the evidence given by P.W.2 and P.W.3/doctors. The Tribunal failed to consider the fact that the Petitioner had suffered compound fracture and multiple grievous injuries, also underwent skin grafting. The amount provided under different heads is very nominal. Thus, the Petitioner sought for enhancement of the award amount by allowing Cross Objection.

8. Further the Petitioner/claimant/Cross Objection also filed CMP.No.342 of 2017 in Cross Obj.92 of 2016 seeking permission of this court to receive the additional documents to prove his claim.

9. It is only quantum appeal. Both sides have not seriously contested the issue regarding negligence aspect.

10. PW1/Petitioner clearly deposed that on 01.08.2010 at about 1 pm., while he was proceeding in motor cycle on the extreme left side of the Vilandhidasamuthiram road, the respondent bus came at high speed, dashed against the two wheeler, resulting in the accident. The Police also registered Ex.P.1-FIR against the respondent bus driver only. The Petitioner categorically stated about the manner in which the accident occurred.

11. On the other hand, the respondent/Transport Corporation has not examined any witness to disprove the petitioner's claim. As such, the Tribunal on the basis of P.W.1 evidence and

contents of Ex.P.1-FIR correctly concluded that the respondent bus driver' negligence alone caused the accident and the same is just and proper.

12. The Petitioner stated that he suffered compound injury on the right knee with skin loss and there is loss of muscles in the right knee and thigh. To prove the nature of injury suffered by the Petitioner, he produced Ex.P.3-Accident Register copy issued by Government Hospital, Sirkali, and Ex.P.4-Wound Certificate issued by Vinodhagan Memorial Hospital, Thanjavur. The Petitioner also stated that he underwent treatment as inpatient in the above said private hospital at Thanjavur, and produced Discharge summary issued by the said Hospital as Ex.P.5 and Ex.P.6. It is therefore clear that the Petitioner has suffered multiple grievous injuries and underwent treatment as inpatient.

13. The Petitioner examined P.W.2 doctor to prove the disability suffered by him. According to P.W.2, the Petitioner suffered compound injury and skin loss in his right knee. There is deformity scar contracture to the Petitioner with disfigurement and there is wasting of muscles due to which the petitioner is not able to bend his leg and the Petitioner feels difficulty in squatting, running and in attending to day to-day affairs. Further, P.W.2 has issued Ex.P.11-Disability certificate, wherein it is suggested that the Petitioner has suffered 45% disability.

14. Likewise, the other doctor who deposed as P.W.3 stated that on examination, he found that petitioner has suffered fracture and the teeth are irregular, due to which the Petitioner is facing difficulty in eating; further there is disfiguration in the face of the petitioner. According to P.W.3/doctor, the Petitioner has suffered fracture in his face and nose bone. As such, the disability suffered by the Petitioner is assessed at 40% and the disability certificate issued by P.W.3/doctor is marked as Ex.P.13.

15. Admittedly, both P.W.2 and P.W.3 have not treated the petitioner and also failed to enclose any calculation sheet with Ex.P.11 and Ex.P.13-Disability Certificate. As such, the Tribunal was right in concluding that the Petitioner suffered 25% disability in his right leg and 20% disability in his face. Thus, the Tribunal fixed the total disability suffered by the Petitioner at 45%.

16. The learned counsel for the claimant states that due to road accident, the Petitioner/claimant suffered total blindness in his right eye. Further to prove that the Petitioner is a bright student and involved in extracurricular activities,

produced additional documents as mentioned in CMP.No.342 of 2017.

17. Considering the reasons stated in the said petition, the same is allowed. Additional Documents are marked by Court as Ex.P.15 to Ex.P.24. It is clear from Ex.P.23 Medical Report of the Aravind Eye Hospital that the Petitioner suffered loss of eye sight in his right eye. Considering the same and other disability as evidenced by P.W.2 and P.W.3, it will be appropriate to fix the whole body disability suffered by the Petitioner at 45%. The learned counsel for the Petitioner/injured pointed out that the petitioner having suffered loss of eye sight, will not be able to do his normal activity and as his age is only 18 years, his future is affected. The Petitioner stated that he was a student at the time of the accident. To prove that the Petitioner was a bright student and involved in extracurricular activities, the Petitioner has produced additional documents which are marked Ex.P.15 to Ex.P.20 and Ex.P.22. The Identity Card issued by the Polytechnic Institute where the petitioner was studying is marked as Ex.P.21. The learned counsel for the Petitioner contended that being 18 year old and bright student, the notional income of the Petitioner can be fixed as Rs.10,000/- per month along with future prospects of 50%.

18. Considering the age of the Petitioner, the correct multiplier to be applied is '18'. As the petitioner's disability is fixed at 45% and that he was a student and a non earning member and also considering the all round performance of the Petitioner, as evidenced by Ex.P.15 to Ex.P.22, it will be appropriate to fix the notional monthly income at Rs.8000/-. Thus, the loss of future earnings will be $\text{Rs.8000} \times 12 \times 18 = 1,72,80,000 \times 45/100 = \text{Rs.7,77,600/-}$.

19. Considering the nature of injury suffered by the Petitioner, it will be appropriate to provide Rs.50,000/- towards Pain and Suffering to the Petitioner.

20. The amount provided by the Tribunal under the head "Incidental Expenses" is unsustainable and hence the same is set aside. The sum of Rs.31,441/- provided by the Tribunal under the head "Medical Bills" is now rounded off to Rs.32,000/-. Further, it will be appropriate to award Rs.25,000/- towards Extra nourishment.

21. Considering the period of treatment undergone by the Petitioner, he would have taken the assistance of an attender and as such, towards "Attender charges", Rs.10,000/- is provided. The Tribunal also pointed out that due to injury suffered in the eye, the Petitioner has lost vision in one eye. Due to that, the Petitioner is stated to have discontinued his

studies and the same affected his future. Considering the fact that there is loss of vision in one eye and disfigurement, his matrimonial life will be affected and hence, the sum of Rs.25,000/- is provided under the head "loss of matrimonial prospects" and Rs.25,000/- towards loss of amenities. The modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of future earning capacity	3,88,800	7,77,600
2.	Pain and suffering	22,500	50,000
3.	Transportation	11,550	11,550
4.	Incidental expenses	10,000	---
5.	Medical bills	31,441	32,000
6.	Extra nourishment	20,000	25,000
7.	Future medical expenses	15,000	15,000
8.	Loss of amenities	20,000	25,000
9.	Attender charges	---	10,000
10.	Loss of matrimonial prospects	---	25,000
	Total	5,19,291	Rs.9,71,150/-

22. In the above said circumstances, this court finds no merit in the appeal filed by the Transport Corporation and the same has to fail. On the other hand, as stated above, the Cross Objection is to be entertained.

23. In the result, the Civil Miscellaneous Appeal No.201 of 2016 is dismissed. Cross Objection No.92 of 2016 is Allowed.

(i) The award amount is enhanced to Rs.9,71,150/- from Rs.5,19,291/-.

(ii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iii) This Court, by order dated 08.02.2016 in CMP.No.1729 of 2016 in CMA.No.201/2016, directed the Transport Corporation to deposit the entire award amount along with interest. Further the claimant was permitted to withdraw 50% of the deposited amount along with proportionate interest. This court also directed the Tribunal to keep the remaining amount in Fixed Deposit in any Nationalised Bank for a period of three years and the same shall be renewed periodically and permitted the claimant to withdraw the interest once in six months. Therefore, the appellant in CMA.No.201/2016/Transport Corporation is

directed to deposit the modified enhanced award amount along with proportionate interest and cost, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iv) The claimant/injured Petitioner/Cross Objector is entitled to withdraw the award amount as ordered above along with accrued interest, less the amount, if any already withdrawn.

(v) The Tribunal is directed to pass necessary orders following the appropriate procedure for disbursal of the award amount.

(vi) No costs. Consequently, connected MPs are closed.

Additional Documents marked Before this court:-

- 1.Ex.P.15 - Scouts and guides/Patrol leaders Training and completion course
- 2.Ex.P.16 -District annual camp participation certificates for 2004
- 3.Ex.P.17 -District annual camp participation certificate for 2005
- 4.Ex.P.18 - Basketball merit certificate (3 nos.)
- 5.Ex.P.19 -Industrial school certificate in food production, course completion certificate.
- 6.Ex.P.20 -Inter Polytechnic Athletic Association Basket Ball runner up certificate
- 7.Ex.P.21 -Muthiah Polytechnic Identity card
- 8.Ex.P.22 - Muthiah Polytechnic college transfer certificate
- 9.Ex.P.23 - Aravind Eye Hospital medical report
- 10.Ex.P.24 -Photos of the injured claimant.

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal,
Special Subordinate Court, Cuddalore.

+1cc to Mr.A.N.VISWANATHA RAO, Advocate, S.R.No.46282

+1cc to Mr.D.VENKATACHALAM, Advocate, S.R.No. 47158

C.M.A.No.201 of 2016
and Cross obj.92 of 2016

TM(CO)

TR(30/07/2018)