

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2078 of 2018
and
CMP.No.16189 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Having office at Railway Station New Road,
Kumbakonam Town, Taluk & Munsifi. .. Appellant

Vs.

Karthikesan ... Respondent

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.03.2017 made in M.C.O.P.No.192 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Nagapattinam.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.S.Girudharan

JUDGMENT

The Transport Corporation has filed this appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 15.3.2017 passed in M.C.O.P.No.192 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Nagapattinam.

2.The respondent is the claimant. It is the claim of the respondent/claimant that on 31.7.2014 at about 1 PM, when he was riding a motor cycle with his friend as a pillion rider in Nagapattinam - Thiruthuraipoondi Road and nearing Keezhaiyur Police Station, a Government Bus bearing registration No. TN 68 N 0385, driven by its driver in a rash and negligent manner came in opposite direction and hit against the vehicle of the

respondent/claimant causing grievous injuries to him and because of the said accident, the respondent/ claimant claims to have become disabled. He, thus, claimed a sum of Rs.15 lakhs towards compensation.

3.The appellant/Transport Corporation opposed the said claim petition by filing a counter affidavit to the effect that the respondent/ claimant was at fault and that the owner and insurance company of the vehicle driven by the respondent/claimant was not impleaded and that the amount claimed as compensation is excessive.

4.Before the Tribunal, the respondent/claimant examined himself as P.W.1 and marked five documents, i.e., Exs.P1 to P5. On the side of the appellant/Transport Corporation, the driver of the bus was examined as R.W.1, but no document was marked.

5.The Tribunal, after consider the oral and documentary evidence, apportioned the negligence of the driver of the appellant/ Transport Corporation as 70% and the negligence of the respondent/ claimant as 30%. The Tribunal fixed the income of the respondent/claimant at Rs.6,000/- per month and by applying 18 multiplier, the total loss of income was arrived at Rs.12,96,000/-. Calculating 70% of the said sum, the Tribunal arrived at Rs.9,07,200/- and to this a sum of Rs.35,000/- was added towards pain and suffering and for transport expenses, special diet, etc., a sum of Rs.15,000/- was added. Thus, the Tribunal arrived at a sum of Rs.9,57,000/- and of the said sum 70%, being Rs.6,70,040/-, was awarded.

6.Assailing the said judgment and decree, the present appeal is filed by the Transport Corporation.

7.The learned counsel for the appellant/Transport Corporation submitted that the respondent/claimant drove the motorcycle in a rash and negligent manner from the opposite direction and overtook another bus and dashed the bus of the appellant/Transport Corporation and, therefore, the Tribunal ought to have fixed at least 50% negligence on the respondent/claimant.

8.The learned counsel further submitted that no evidence has been produced by the respondent/claimant to prove that his future earning capacity was affected by the accident and moreover, the Tribunal ought not to have fixed permanent disability at 70% as there is no evidence to prove that the disability sustained by the claimant would have affected his earning capacity.

9.Per contra, the learned counsel for the respondent/claimant reiterated the reasons that weighed with the learned Tribunal in passing the judgment and decree and prayed for dismissal of this appeal.

10.I heard Mr.D.Venkatachalam, learned counsel for the appellant and Mr.S.Giridharan, learned counsel for the respondent and perused the documents available on record.

11.In the case on hand, qua negligence, the Tribunal had categorically held that the accident took place in a highway and the the respondent/claimant was driving the motorcycle. The Tribunal opined that the driver of the appellant Corporation will be much more experienced and cognizant of the traffic rules and regulations, rather than the respondent/claimant and the driver of the appellant/Corporation, in his evidence, deposed that he noticed the respondent claimant was attempting to overtake the bus. Therefore, the driver of the appellant/Corporation's bus had every chance to be more cautious and apply brake to avert the accident. The Tribunal taking into account all these vital factors fixed 70% negligence on the part of the driver of the appellant/Corporation. The said apportionment, in my considered opinion, does not warrant interference by this Court.

12.Coming to the disability suffered by the respondent/claimant, it is seen that as per the report of the Medical Board, the respondent/ claimant suffered 70% disability. He suffered a fracture on his leg and he did fishing for livelihood. These factors are not in dispute. In such circumstances, considering the disability suffered by the respondent/ claimant, the Tribunal fixing the income of the the respondent/claimant at Rs.6000/- per month applied multiplier of 18, considering the fact that the age of the respondent/claimant is 21 in consonance with the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation Ltd., reported in 2009 (2) TN MAC 1 (SC).

13.A Division Bench of this Court in United India Insurance Co. Ltd. v. Veluchamy, 2005 (1) CTC 38, set out the parameters as to when the multiplier method can be adopted in the case of injury. In paragraph (11) of the decision, it has been held thus:

"The following principles emerge from the above discussion:

(a) In all cases of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988.

(2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."

14. In the case on hand, the Tribunal considering the fact that the respondent/claimant, by virtue of the accident, lost his avocation adopted multiplier method and this Court finds no justifiable reason to interfere with the same.

15. The award of the Tribunal under other heads, in my considered opinion, does not warrant interference.

16. For the foregoing reasons, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

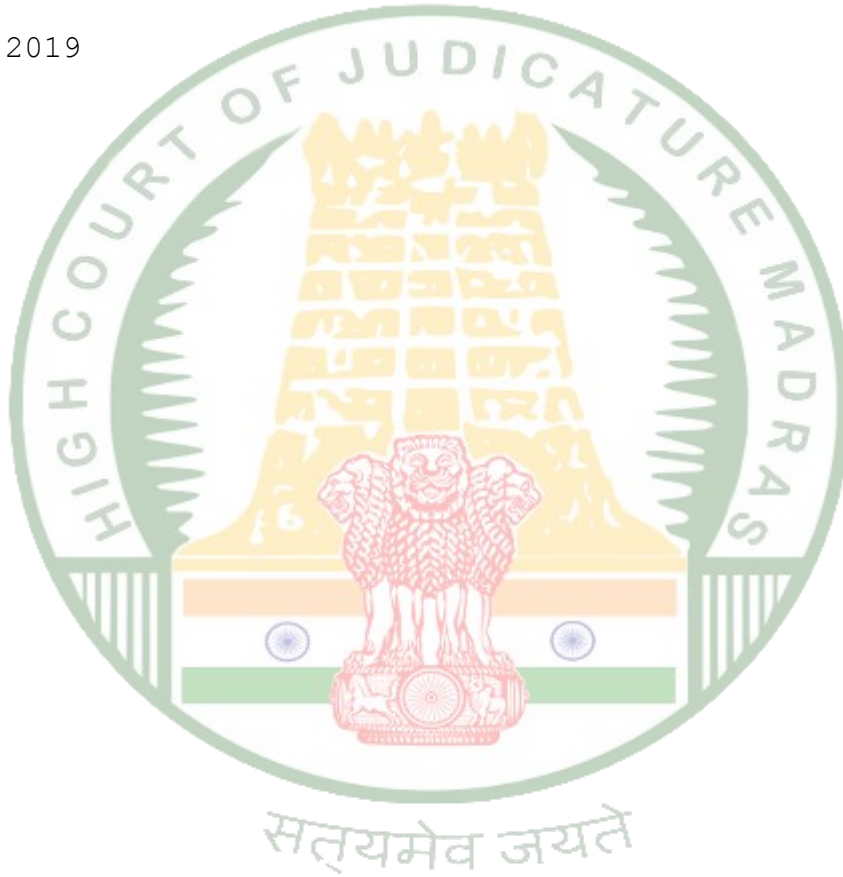
1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Nagapattinam.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to M/s.S.Girudharan, Advocate Sr.No.62576
+1 cc to M/s.D.Venkatachalam, Advocate Sr.No.62535

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CNR (CO)
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