

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.2855 of 2016

The Managing Director
Tamil Nadu State Transport
Corporation (Salem) Limited
No.12, Ramakrishna Road,
Salem- 636 007

.. Appellant/Respondent

-vs-

Megha Trikha

.. Respondent/Petitioner

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 10.09.2015 made in M.C.O.P.No.1268 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri.

For Appellant :: Mr.D.Venkatachalam

For Respondent :: Mr.S.P.Yuvaraj

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this appeal is to the award of a sum of Rs.88,54,000/- for the injuries suffered by the Claimant in the motor accident that occurred on 26.03.2008.

2. According to the Claimant, when she was travelling as a passenger in the Honda City Car bearing Registration No.KA 04 MC 8132 from Bangalore to Chennai, the bus belonging to the Transport Corporation bearing Registration No.TN 29 N 1650, driven by its driver in a rash and negligent manner, came in the opposite direction and dashed against the car. On account of the said accident, the Claimant suffered grievous injuries resulting in paralysis of the left hip upto the foot rendering her paraplegic. Claiming that she was a student of Bachelor of Business Management course and she was also acting in films, TV serials and doing modelling, as she was earning a monthly income of Rs.95,000, she claimed a compensation of Rs.2,00,00,000/-.

3. The claim petition was resisted by the Transport Corporation contending that the accident occurred only due to the rash and negligent driving of the car in which the claimant was a passenger. The Corporation also denied the claim that the claimant was earning about Rs.95,000/- by doing various jobs as set out in the claim petition. The quantum of compensation claimed was termed as excessive.

4. On the basis of the evidence on record, particularly, the First Information Report, which was marked as Ex.P1, it was found that it is the negligence on the part of the bus driver that caused the accident. The evidence of R.W.1, the driver of the bus, was also taken into consideration by the Tribunal in reaching the said conclusion. The Tribunal found the disability caused was almost 100% based on the discharge summaries issued by SPARSH Hospital and the Narayana Institute of Neurosciences, Bangalore. On the quantum, the Tribunal took the notional income of the injured at Rs.20,000/- and after adding 50% towards future prospects, it arrived at the annual income at Rs.3,60,000/-. After deducting Rs.32,000/- towards income tax, arrived at the functional disability/loss of earning power at Rs.59,04,000/-. The Tribunal also awarded a sum of Rs.11,25,000/- towards permanent disability, Rs.14,00,000/- towards medical expenses, Rs.2,00,000/- towards pain and suffering, Rs.1,00,000/- towards future medical expenses, Rs.25,000 each towards Physiotherapy charges, attender charges and transportation. A sum of Rs.50,000/- was awarded for extra nourishment. In all, the Tribunal awarded a sum of Rs.88,54,000/-.

5. We have heard Mr.D.Venkatachalam for the appellant/Transport Corporation and Mr.S.P.Yuvaraj for the respondent/Claimant.

6. Mr.D.Venkatachalam, learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal was in error in concluding that the accident occurred due to the rash and negligent driving of the driver of the bus. He would also add that the Tribunal is wrong in taking the monthly income at Rs.20,000 after rejecting the salary certificates filed by the claimant. He also faulted the Tribunal for adding 50% towards future prospects.

7. Per contra, Mr.S.P.Yuvaraj, learned counsel appearing for the respondent/Claimant contended that the claimant was studying Bachelor of Business Management at the time of the accident. She was also doing modelling apart from acting in films, T.V. Serials. Therefore, according to him, the income arrived at by the Tribunal at Rs.20,000/- per month is just and proper. The learned counsel would fairly accept that the Tribunal was not right in adding 50% towards future prospects, in view of the

judgement of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company v. Pranay Sethi and others, 2018-1-L.W. 331.

8. We have considered the rival submissions.

9. The Tribunal had rightly rejected the salary certificates produced as Exhibits P5 and P7. After having rejected the salary certificates, the Tribunal has taken the monthly income at Rs.20,000/-. We find that the said notional fixation of income is on the higher side. In any event, considering the fact that the accident had happened in the year 2008, we are of the opinion that the monthly income can be taken at Rs.15,000/-. Adding 40% towards future prospects, the monthly income for the purposes of deciding the loss of future earning power would be Rs.21,000/-. The multiplier to be adopted is '18' considering the age of the claimant. Thus, the functional disability/loss of future earning power is worked out to Rs.45,36,000/- (Rs.21000x12x18). The Tribunal has awarded a sum of Rs.11,25,000/- towards permanent disability. Admittedly, the percentage of disability is assessed at 70%. By awarding Rs.3,000/- per percentage of disability, the amount towards permanent disability is worked out to Rs.2,10,000/-. As regards the medical bills marked through Ex.P9, it is seen that the amount of Rs.5,51,744/- relates to advance receipts and there is no actual bill to support the said claim. Hence, the award under the head of medical bills is reduced to Rs.8,48,258/-. The Tribunal has awarded Rs.1,00,000/- towards the future medical expenses. Admittedly, the Claimant has been rendered paraplegic and she would require future treatment and the award of Rs.1,00,000/- is on the lower side. We, therefore, award Rs.3,00,000/- towards future medical expenses and the amount awarded towards pain and sufferings is increased to Rs.3,00,000/- from Rs.2,00,000/-. The Tribunal has awarded Rs.25,000/- for attender charges. The same is enhanced to Rs.2,00,000/-, in view of the fact that the claimant would have to depend on an attender throughout her life. The compensation awarded under the other heads, namely, physiotherapy charges, extra nourishment and transportation at Rs.25,000/-, Rs.50,000/- and Rs.25,000/- respectively are sustained. Thus, the total compensation works out to Rs.64,94,258/-, which is rounded off to Rs.65,00,000/-. The award will carry interest at the rate of 7.5% per annum from the date of petition till the date of payment. The appellant-Transport Corporation has deposited 25% of the compensation awarded by the Tribunal, pursuant to the interim order of this Court. The Transport Corporation is directed to deposit the balance amount as per the modified award within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, the claimant would be entitled to withdraw the entire amount with proportionate interest and costs.

10. With the above modification in the award, the civil miscellaneous appeal is partly allowed. Consequently, C.M.P.No.20683 of 2016 is closed. There is no order as to costs in the appeal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssb/ss

To

1. The Motor Accident Claims Tribunal
Additional District Judge
Krishnagiri

+1cc to Mr.D.Venkatachalam, Advocate sr.no.64863

+1cc to Mr.S.P.Yuvaraj, Advocate sr.no.64747

C.M.A.No.2855 of 2016

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