



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM:

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

CMA.Nos.717 & 718 of 2016

1. Sathiyasekar ... Appellant in CMA No.717 of 2016/Claimant
2. Manjudha ... Appellant in CMA No. 718 of 2016/Claimant

-vs-

1. Duraisamy
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Having his office at 12, Ramakrishna Road,
Salem -7. ... Respondents
(in both the appeals)

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 05.12.2014 made in MCOP. Nos.163 of 2012 and 164 of 2012 respectively, on the file of the Motor Accidents Claims Tribunal cum Special Sub Court No.I, Salem.

For Appellant : Mrs.R.Poornima
(in both the Appeals)

For Respondents : N.A for R1

Mr.D.Venkatachalam for R2

C O M M O N J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

Both these appeals are at the instance of the injured claimants who sought for a compensation of Rs.40,00,000/- in M.C.O.P.No.31 of 2012 (CMA No.717 of 2016) and Rs.10,80,000/- in M.C.O.P.No.32 of 2012 (CMA No.718 of 2016) on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem.

2. It is seen that the said Original petitions namely, MCOP Nos. 31 and 32 of 2012 were transferred to the file of the



Special Sub-Court No.I, which was constituted as Motor Accident Claims Tribunal and renumbered as MCOP No.163 of 2012 and MCOP.No.164 of 2012.

3. The case of the claimants in both the original petitions is as follows:

The claimants were travelling as pillion riders in Hero Honda Motor cycle bearing Registration No.TN-54-Z-8024 driven by one Guru and as they were crossing the National Highway road from South to North near Sarvai Bus stop, the bus belonging to the Transport Corporation bearing Registration No.TN-30-N-0450 driven by its driver in a rash and negligent manner coming from East to West dashed against the two-wheeler, resulting in grievous injuries to both the claimants. The claimant in M.C.O.P.No.163 of 2012 suffered severe skull injuries and the claimant in M.C.O.P.No.164 of 2012 suffered minor injuries. Terming, the rash and negligent driving on the part of the Bus driver as the cause for the accident, the claimants sought for compensation as aforesaid.

4. According to the claimants, the claimant in M.C.O.P.No.163 of 2012 suffered grievous injuries in the skull resulting in loss of eye sight in the left eye. It was also contended that he has taken treatment as an inpatient at Manipal Hospital, Salem from 22.05.2010 to 07.07.2010. He was admitted to National Institute of Mental Health and Neuro Sciences at Bangalore on 07.07.2010 from where he was discharged on 08.07.2010. Again he was admitted to Apollo Hospital, Chennai on 09.07.2010 and three surgeries were performed on him eventually he was discharged on 31.07.2010. Claiming that he was a third year Engineering student and he was forced to discontinue his education because of the accident, the claimant would contend that he has suffered a 100% disability.

5. The Transport Corporation resisted the claim petition contending that the accident occurred due to the rash and negligent driving of the driver of the two-wheeler who crossed the road in front of a parked bus, resulting in the accident. The Transport Corporation would contend that the bus driver was not responsible for the accident and hence, it is not liable to pay the compensation. The age and educational qualification were denied by the Corporation.

6. The Tribunal, which heard the original petition, based on the First Information Report and the evidence of the rider who was examined as PW5, concluded that both the vehicles have contributed to the accident and apportioned the negligence at 60:40. The Tribunal assessed the disability caused to the claimant in M.C.O.P.No.163 of 2012 at 70%. The notional income of the injured claimant was taken at Rs.7,500/-, therefore, the



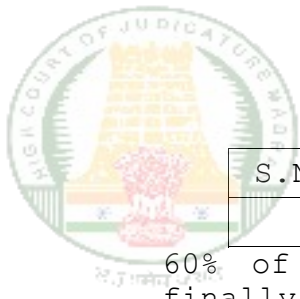
Tribunal awarded a sum of Rs.11,34,000/- (7,500/- x 12 x 18 x 70/100) towards loss of earning power. The Tribunal awarded the following amounts under various heads is as follows:

S.No.	Particulars	Amount
1.	Pain and Suffering	Rs. 1,00,000/-
2.	For shock and mental agony	Rs. 50,000/-
3.	Food and extra-nourishment	Rs. 25,000/-
4.	For Medical expenses including transport	Rs.12,50,000/-
5.	For loss of personal belongings	Rs. 1,000/-
6.	For loss of earning power	Rs.11,34,000/-
7.	For loss of amenities	Rs. 2,00,000/-
8.	For loss of marriage prospects	Rs. 5,00,000/-
9.	For future treatment skull cover surgery	Rs. 1,00,000/-
10.	Total	Rs.33,60,000/-

In view of the fact that the Tribunal had apportioned the negligence at 60:40, the Tribunal awarded 60% of Rs.33,63,000/- equivalent to Rs.20,16,000/- to the claimant in MCOP No.163 of 2012.

7. As regards the claimant in MCOP No. 164 of 2012, the Tribunal found that she has suffered a 15% disability, since there was no effect on her earning power because of the disability suffered, the Tribunal did not award any amount towards loss of earning power. The Tribunal awarded the following amounts under various heads is as follows:

S.No.	Particulars	Amount
1.	Pain and Suffering	Rs. 30,000/-
2.	For partial loss of income	Rs. 40,000/-
3.	Food and extra-nourishment	Rs. 5,000/-
4.	Medical expenses	Rs. 25,000/-
5.	Transportation	Rs. 4,000/-
6.	For disability (Rs.3,000/- x 15%)	Rs, 45,000/-
7.	Loss towards personal belongings	Rs. 1,000/-



S.No.	Particulars	Amount
	Total	Rs.1,50,000/-

60% of the said sum of Rs.1,50,000/- namely Rs.90,000/- was finally awarded as compensation.

8. Aggrieved, the claimants are before us by the way of these appeals seeking enhancement.

9. We have heard Mrs.R.Poornima learned counsel appearing for the appellants/claimants, Mr.D.Venkatachalam learned counsel appearing for the Transport Corporation. The Driver of the bus was arrayed as 1st respondent. It is seen from the records that he had remained ex-parte before the Tribunal, hence, notice to the 1st respondent is dispensed with.

10. Mrs.R.Poornima learned counsel appearing for the appellants would contend that the Tribunal erred in fixing the negligence at 60:40. According to her, considering the nature of the accident, the Tribunal should have fixed a lesser percentage of the negligence on the rider of the two-wheeler. We have perused the First Information Report as well as the evidence of PW5, from the said evidence, it is clear that the rider of the motor cycle has also contributed to the accident by crossing a National Highway in front of a parked bus. Even the First Information Report which was lodged by the rider of the motor cycle clearly depicts the accident, as having occurred, while he attempted to cross the road in front of a parked bus and the Transport Corporation bus which was coming from behind the parked bus hit against the motor cycle. Of course, it can be said that both the drivers did not have the chance of sighting the other vehicle. However, since, it is admitted case that the two-wheeler was attempting to cross the National Highway, the rider of the two-wheeler must have been extra careful. At the same time, we also cannot overlook the fact that as result of the collision almost on the entire right side of the motor cycle including the silencer have been damaged. We therefore find that the negligence on the part of the bus driver was more than the negligence on the part of the rider of the two-wheeler. PW5, in his evidence has admitted the manner in which the accident had occurred.

11. The Tribunal was apportioned the negligence at 60% on the part of the bus driver and 40% on the part of the two-wheeler. Therefore, we see no justification to interfere the apportionment of negligence made by the Tribunal.



12. On the quantum, insofar as MCOP NO.163 of 2012 is concerned, the injured claimant was a third year Engineering student at the time of the accident. The accident had occurred on 22.05.2010. The Tribunal has taken his notional income at Rs.7,500/- per month, the said notional fixation by the Tribunal is on lower side, even at very reasonable estimates. The fact that the injured was pursuing his Bachelor of Engineering is admitted and he had bright future prospects which have been severely affected by the accident. We are, therefore, of the opinion that the income can be safely fixed at Rs.15,000/- per month and adding 40% towards future prospects, the notional income for the purposes of determining the loss of earning power would be Rs.21,000/- per month. The injured was about 22 years at the time of accident, hence the multiplier would be 18. Thus, worked the total compensation for loss of earning power would be

$$\text{Rs.21,000} \times 12 \times 18 \times 70/100 = \text{Rs.31,75,200/-}.$$

We have already extracted the amounts awarded by the Tribunal on various heads. We find that the awards on the head of future medical treatment at Rs.1,00,000/- is below par, considering the fact that the claimant had suffered injuries in the skull and it is seen from the evidence that he would require for future surgeries in his skull. We are, therefore, of the considered opinion that the amount of Rs.3,00,000/- would be a proper award for future medical treatment. It is also not in dispute that the claimant was in-patient for nearly 78 days in various Hospitals in Salem, Bangalore and Chennai. He would have definitely required an attender during the treatment, no amount has been granted by the Tribunal towards attender charges. We, therefore, grant a sum of Rs.1,56,000/- towards attender charges at Rs.2,000/- per day. It is seen that the claimant had under taken travel to the hospitals at Salem, Bangalore and Chennai for treatment. Hence, we award a sum of Rs.50,000/- towards future transportation charges. Thus, the total award amount would be Rs.58,07,200/-.

13. The details of the modified award is as follows:

S.No.	Particulars	Amount
1.	Pain and Suffering	Rs. 1,00,000/-
2.	For shock and mental agony	Rs. 50,000/-
3.	Food and extra-nourishment	Rs. 25,000/-
4.	For Medical expenses including transport	Rs.12,50,000/ -



S.No.	Particulars	Amount
5.	For loss of personal belongings	Rs. 1,000/-
6.	For loss of earning power	Rs.31,75,200/ -
7.	For loss of amenities	Rs. 2,00,000/-
8.	For loss of marriage prospects	Rs. 5,00,000/-
9.	For future treatment skull cover surgery	Rs. 3,00,000/-
10.	For attender Charges	Rs. 1,56,000/-
11.	For Future Transportation	Rs. 50,000/-
	Total	Rs.58,07,200/ -

We have already apportioned the negligence at 60:40, therefore, the claimant would be entitled to 60% of the above sum as compensation, it would be Rs.34,84,320/-, the same is rounded off to Rs.35,00,000/-.

14. In view of the above, CMA No.717 of 2016 is partly allowed. The compensation awarded by the Tribunal is enhanced to Rs.35,00,000/- with interest at 7.5% per annum on Rs.32,90,000/- from the date of petition till date of payment. The sum of Rs.2,10,000/- (60% of 3,50,000) awarded to wards future medical expenses and future transportation will not carry interest.

15. The Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited along with accrued interest within a period of 8 weeks from the date of receipt of the copy of the judgment. On such deposit, the appellant in CMA No.717 of 2016 is permitted to withdraw the entire amount.

16. Insofar as the appeal in CMA No.718 of 2016 is concerned, we find that the quantum of compensation awarded by the Tribunal is just and reasonable, considering the nature of injuries suffered by the claimant. Therefore, we see no ground to interfere with the said award. Hence, the appeal in CMA No.718 of 2016 is dismissed. However, there shall be no order as to costs in these appeals.



17. The Transport Corporation is directed to deposit the amount less the amount, if any, already deposited within a period of 8 weeks from the date of receipt of the copy of the judgment. On such deposit, the claimant is entitled to withdraw the same.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

jv/kkn

To

- 1.The Motor Accidents Claims Tribunal
Special Sub Court No.I,
Salem.
2. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No. 69328
+1cc to Mr.R.Poornima, Advocate, S.R.No. 69759

CMA.Nos.717 & 718 of 2016

NRI (CO)
GN(21/03/2019)