IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1396 of 2018
and CMP.No.11199 f 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division II) Ltd.,
Erode. ... Appellant/Respondent No.2

Vs

1. P.Jaganathan ... R1/Petitioner
2. K.Kannan ... Respondent No.2/R1

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 08.12.2015 made in M.C.O.P.No.138 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Perundurai.

For Appellant :Mr. K.J.Sivakumar

For Respondents:Mr.R.Arundattan for R1
R2 set exparte before the Tribunal

J U D G M E N T

(KRISHNAN RAMASAMY, J )



Aggrieved over the award passed by the Motor Accident Claims Tribunal, Subordinate Judge, Perundurai in MCOP. No. 138 of 2014 dated 08.12.2015, the appellant herein, who is the second respondent in the above said MCOP, has filed this Appeal.

2. Heard Mr. K.J.Sivakumar, the learned counsel for the appellant and Mr.Arundattan, the learned counsel for the first respondent.

3. The brief facts of the case are as follows:-

On 15.08.2014 at 7:20 p.m., the petitioner was walking on the Kunnathur Four Road to Perundurai. While he was coming near Murugan Tea stall from East-West, the bus bearing Registration No.TN 33 N 1731 which came from South-North in a rash and negligent manner dashed against the petitioner. The petitioner sustained injuries all over his body and he was immediately admitted in the KMCH Hospital, Perundurai. Then, he was shifted to Ganga Hospital, Coimbatore. The accident took place only due to the rash and negligent driving of the first respondent bus driver. Hence the Perundurai Police registered a case in Crime No.396 of 2014 under Sections 279, 337 IPC.

4. On the other hand, the second respondent/appellant filed its counter stating that the first respondent drove the bus from Perundurai - Gobi observing the traffic rules. While the bus was coming from Kunnathur Four road signal, the petitioner was crossing the road speaking in cell phone. Without noticing the bus, he climbed over the centre median and fell into the front back wheel of the bus. Immediately, the first respondent stopped the bus and admitted the petitioner in the KMCH, Perundurai. The petitioner without noticing the vehicle jumped over the centre median. So he invited the accident. The petitioner suppressed the real facts and filed a false complaint before the police. FIR is not conclusive proof of accident. Mere filing of FIR cannot be stated that the first respondent is negligent.

5. The Tribunal after considering pleadings and evidences came to the conclusion that the accident occurred due to the negligent driving of the bus driver bearing Registration No.TN 33 N 1731.

6. The Tribunal awarded a sum of Rs.17,77,678/- as compensation to the claimant. Aggrieved over the said findings and award, the appellant/Transport Corporation has come forward with the present appeal.

7. Under these circumstances, the appellant raised the following issues in this appeal:-

1. Whether the negligence fixed by the Tribunal on the part of the driver of the bus is just and fair?
2. Whether the compensation awarded by the Tribunal is just and fair?



7.1. On behalf of the first respondent/petitioner, PW1 eye witness was examined and he deposed that on 15.08.2014 at 7:20 p.m. when the petitioner was walking on the Kunnathur Four Road to Perundurai, the driver of the bus bearing Reg.No.TN 33 N 1731 drove the bus in a rash and negligent manner and ran over the right leg of the petitioner. Further PW1 deposed that the petitioner suddenly crossed the road without noticing the bus. In this regard FIR was also registered as that the driver of the bus drove it in a rash and negligent manner and the front back wheel of the bus ran over the right leg of the petitioner. Rough sketch was marked as Ex.P.2. However, the driver remained exparte and he did not depose about the manner of accident. Further the appellant/2nd respondent did not examine any eye witness to prove that the accident took place due to the negligent act of the petitioner. Subsequent to filing of the FIR, police also filed charge sheet stating that the accident occurred was due to the rash and negligent driving of the bus driver. Hence, the Tribunal came to the conclusion that the accident occurred only due to the rash and negligent driving of the bus driver. We also concur with the findings of the Tribunal in this regard.

7.2. Due to the said accident the petitioner sustained the following injuries:-

1. Right leg: severely crushed right foot and ankle with total degloving and mutilation of whole foot. Anterior tibial artery ligated at lower leg. 2) All of the foot and ankle bones and lower tibia crushed and exposed. Composite soft tissue loss over the foot dusky in colour. Foot and ankle - non salvageable. X-ray report reveals Fracture medial malleolus talus and Cacaneum with ankle, subtaar amd mid tarsal joint dislocation. He was admitted on 16.08.2014 and discharged on 20.08.2014. He was diagnosed with major crush injury right foot, ankle and lower leg with severe mutilation of foot and ankle vascular injury anterior and posterior tibial vessels. The petitioner got operated on 16.08.2014 below knee amputation right leg.

8. Ex.P.10 Transfer Certificate shows that the Date of Birth of the petitioner as 15.06.1992. Therefore, on the date of accident the age of the petitioner was 22 years. Ex.P.11 Provisional Certificate reveals that the petitioner passed B.E. Degree. The District Differently abled welfare Officer, Salem, Government of Tamil Nadu, issued a Pass Book stating that the petitioner's permanent disability is at 70%. PW2 also assessed that the petitioner's disability is at 70%. The petitioner deposed that he was earning about Rs.20,000/- per month. However the petitioner did not produce any supporting document in this regard. Since the petitioner had lost his right leg and being a B.E., graduate, it is just and necessary to fix appropriate compensation and to consider the future prospects also. The Tribunal fixed a sum of Rs.7500/- as notional income of the petitioner for the purpose of fixing the compensation for the year 2014 and fixing notional income of Rs.7500/- is too low. Therefore, it is just and necessary to fix appropriate notional income by considering various aspect. The Hon'ble Supreme Court in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014(1) TNMAC 459, fixed the monthly income at Rs.6500/- for a vegetable vendor, who sustained injuries in the accident in the year 2008. In the present case, the petitioner being a B.E., graduate, it deems fit to add a sum of Rs.2,000/-

in addition to Rs.6,500/-. The Supreme Court in the above cited case fixed Rs.6,500/- for a vegetable vendor and therefore definitely for an Engineering student it would have fixed the notional income as Rs.8,500/-.

9. However, the Tribunal fixed a sum of Rs.7500/- as notional income for the deceased, without any rationale and any application of mind. Before fixing the income, the Tribunal should have considered the notional income fixed by the Apex Court in Syed Sadiq case (cited supra) and the following other factors.

> (i) The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.
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> (ii) The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.
>
> (iii) Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhacement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour ”.

10. Therefore, it is just and necessary to increase the minimum salary as fixed by the Hon'ble Apex Court corresponding to the cost of living, inflation and increase in price of the essentials which goes up from time to time.

11. The CBDT vide Notification No.370142 (E) (No.26/2008) (F.No.370/42/3/2008-TPL) dated 13.06.2008 specifies the cost of inflation index as mentioned in column No.3, for the financial year mentioned in the corresponding entry in column No.2 in the below said tabular column:-

| S.No. | Financial Year | Cost Inflation Index |
|---|---|---|
| 1 | 2001-2002 | 100 |
| 2 | 2002-2003 | 105 |
| 3 | 2003-2004 | 109 |
| 4 | 2004-2005 | 113 |
| 5 | 2005-2006 | 117 |
| 6 | 2006-2007 | 122 |
| 7 | 2007-2008 | 129 |
| 8 | 2008-2009 | 137 |
| 9 | 2009-2010 | 148 |
| 10 | 2010-2011 | 167 |
| 11 | 2011-2012 | 184 |
| 12 | 2012-2013 | 200 |
| 13 | 2013-2014 | 220 |
| 14 | 2014-2015 | 240 |
| 15 | 2015-2016 | 254 |
| 16 | 2016-2017 | 264 |
| 17 | 2017-2018 | 272 |
| 18 | 2018-2019 | 280 |



12. As per the above said index, the cost inflation index for the year 2008-2009 is 137 and for the year 2015-2016 is 254. Now we determine the notional income of the deceased in the manner stated below:-

The base notional income fixed by the
Hon'ble Supreme Court of India          Cost of Inflation Index
for the vegetable vendor i.e., Rs.8,500/-Xfor the year 2014-2015
_____________________________
Cost of inflation index for the
year 2008-2009

Therefore the income of the deceased is Rs.8500 x 240 / 137 = Rs.14,890/-. The notional income of the deceased after applying inflation index will be a sum of Rs.14,890/-. Hence, we re-fix the notional income of the deceased as Rs.14,890/- from Rs.7500/-. The notional income of Rs.7500/- fixed by the Tribunal is not proper and we set aside the same. We re-fix the notional income of the deceased as Rs.14890/-.

13. In addition to the notional income of Rs.14,890, it is just and necessary to add 40% towards future prospects as held in the judgment, in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, since, further he lost his right leg and due to the said loss, it is very difficult for him to get appropriate employment. So we take future prospects as 40% along with notional income of Rs.14,890/-p.m. (5956+14890 = Rs.20846 p.m.). Loss of earning per annum will be Rs.2,50,152 = (20846x12).

14. In the present case the injured age was 22 years at the time of accident and in the light of the reported decision in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, for the age group between 20 to 25 years , the multiplier to be adopted is '18'. By applying multiplier "18" the total loss of earning will be a sum of Rs.45,02,736 = (250152x18). Considering the nature of the injury suffered by the claimant we take the disability as 50%, instead of 70% as fixed by the Tribunal. Then the loss of earning will be a sum of Rs.22,51,368 = (45,02,736x50%)

15. The Tribunal awarded Rs.10,000/- towards transportation, Rs.10,000/- towards Extra Nourishment, Rs.63,678/- towards Medical Expenses, Rs.50,000/- towards Pain and sufferings, Rs.4,10,000/- towards Artificial limb and Rs.1,00,000/- towards future medical expenses. Since this Court is of the view that the said amounts awarded are just and proper we confirm the same.

16. Hence the total compensation payable to the claimant is as hereunder.

| Head | Amount |
|---|---|
| Loss of earning power | Rs.22,51,368/- |

| Head | Amount |
| --- | --- |
| Pain and suffering | Rs.50,000/- |
| Extra nourishment | Rs.10,000/- |
| Transport to hospital | Rs.10,000/- |
| Artificial limb | Rs.4,10,000/- |
| Future Medical expenses | Rs.1,00,000/- |
| Medical expenses | Rs.63,678/- |
| Total | Rs.28,95,046/- |

17. The Transport Corporation is directed to deposit the entire amount awarded by this Court, along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any, failing which, the Chairman-cum-Managing Director and Chief Financial Officer-cum-Chief Accounts Officer shall appear before this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. The claimant is directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

18. Accordingly, award of the Tribunal (i.e.,) Rs.17,77,678/- is enhanced to Rs.28,95,046/- invoking Order 41 Rule 33 of CPC, and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are beneficial in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Hon'ble Supreme Court in Nagappa Vs. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

19. In the result the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal to the tune of Rs.17,77,678/- is enhanced to Rs.28,95,046/- with interest and costs. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dpq

To
The Motor Accident Claims Tribunal,
Subordinate Judge, Perundurai.

+1cc to Mr.R.Arundattan, Advocate sr.no.70017
+1cc to Mr. K.J.Sivakumar, Advocate sr.no.69974

C.M.A.No.1396 of 2018
and CMP.No.11199 f 2016

SAI(CO)
NR 28/11/2018