

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No. 3293 of 2014

&

M.P. No. 1 of 2014

Tamilnadu State Express Transport Corporation,
rep. by its Managing Director,
Thiruvalluvar House, Chennai 600 002.

..Appellant/2nd Respondent in
Tribunal below

Vs.

1. A. Dheelipan Chakkaravarthy
2. Arokiayaraja

..Respondents/Petitioner and 1st
Respondent in Tribunal below

Prayer: Civil Miscellaneous Appeal as against the judgment and
decree dated 18.08.2014 passed by the Motor Accidents Claims
Tribunal /II Additional District Judge, Tirupur in M.C.O.P. No.
443 of 2013.

For Appellant :: Mr. Antony Arockiaraja

For Respondents :: Mr. D.R. Arunkumar for R1

J U D G M E N T

(Judgment of the Court was delivered by R. SUBBIAH, J.)

Challenging the quantum of compensation awarded by the Motor
Accidents Claims Tribunal (II Additional District Judge),
Tirupur, in and by award dated 18.08.2014, in MCOP No. 443 of
2013, the present appeal has been filed by the Transport
Corporation.

2. The injured/1st respondent is the claimant before the Tribunal.

3. It is the case of the claimant before the Tribunal that on 26.01.2013, when he was travelling as a passenger in the bus belonging to the appellant Transport Corporation bearing Registration No. TN-01-AN-0409, the said bus was driven in a rash and negligent manner without adhering to the traffic rules and regulations thereby resulting in an accident. In the said accident, the 1st respondent/claimant was thrown away and thereby he sustained severe grievous injuries, particularly, head injury, crush injury - left foot & ankle, circumferential lacerated wound mid foot exposing tendons and bones, injury to posterior tibial vessels, multiple fracture, dislocation of metatarsal bones, fracture of distal tibia (L), which ended up in amputation of left leg below knee amputation, fracture of nasal bones & frontal process of right maxilla. At the time of accident, the victim was working as a Lecturer in Dhanalakshmi Srinivasan College of Engineering, Coimbatore and earning a sum of Rs.17,000/- per month as salary. Since his left leg was amputated, he was not in a position to continue his employment. Hence, he filed the claim petition seeking compensation of Rs. 40 lakhs.

4. The case of the claimant was resisted by the Transport Corporation by taking a defence that the accident was, as a result of collision between two vehicles, namely, the Transport Corporation bus bearing Registration No. TN-01-AN-0409 and a car bearing Registration No. TN-37-V-6592. But, neither the owner of the car nor the insurer of the said vehicle were impleaded as parties. Therefore, the entire liability cannot be fixed on the appellant Transport Corporation and hence, sought for dismissal of the claim petition.

5. In order to prove the claim, on the side of the claimant, the claimant examined himself as P.W.1 besides examining P.W.s 2 and 3 and marking EXs-P1 to P11. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1, but no documents were marked on their side. The Tribunal, negating the defence put forth by the appellant Transport Corporation, fixed the negligence entirely on the driver of the appellant Transport Corporation for the cause of the accident and passed an award for a sum of Rs. 34,64,230/-, which is the subject matter of challenge in this appeal.

6. Since the present appeal has been filed questioning only the quantum of compensation awarded, there is no need for this Court to traverse into other aspects of the award.

7. In assailing the quantum of compensation, it is the submission of the learned counsel for the appellant that the Tribunal has awarded an exorbitant sum of Rs.26,43,860/- under the head " Loss of Income". According to the learned counsel for the appellant, absolutely, there is no evidence to show that on account of amputation of leg, consequent to the accident, the claimant was not in a position to continue his avocation as a Lecturer. Hence, in the absence of any positive evidence in regard thereto, the Tribunal ought not to have applied multiplier method and awarded an excessive sum towards "Loss of Income". Further, it is his submission that the Tribunal could have awarded for 60% disability sustained by the claimant, a sum of Rs.2000/- for each percentage of disability.

8. Per contra, learned counsel for the claimant would support the award passed by the Tribunal.

9. Keeping the submissions of the learned counsel on either side, we have carefully gone through the materials on record.

10. It is the first and foremost contention of the learned counsel for the appellant that when there is no convincing material produced to show that on account of the disability sustained by the claimant, he was relieved from the job, the Tribunal should not have applied multiplier method to arrive at "Loss of Income due to disability". However, on a perusal of the entire materials on record, we find that one of the colleagues of the claimant, by name Jayaprakash, who was examined as P.W.2, has categorically stated in his evidence that he was also working as a Lecturer along with the claimant in Dhanalakshmi Srinivasan College of Engineering in Mechanical Department and that after the accident, the claimant was relieved from the job at his own request. We also find that there is no positive reply to the defence of the appellant elicited from P.W.2 . Further, the evidence on record would show that on account of the accident, his left leg was amputated. Therefore, definitely, he would have found it difficult to carry on his avocation, as a Lecturer in College. Moreover, on the side of the Transport Corporation also, no efforts were taken to summon the authorities to prove their defence. Under such circumstances, we are not inclined to accept the submission made by the learned counsel for the appellant that there is no evidence to show that the claimant was relieved from his job on account of the accident.

11. So far as quantum of compensation is concerned, the Tribunal had taken a sum of Rs.17,000/- as monthly income of the claimant, which is supported by Ex-P6, salary certificate.

Thereafter, the Tribunal had added 20% towards "Future Prospects" and arrived at Rs.20,400/- (Rs.17,000/- + Rs.3400/-) as "Total Monthly Income" and the "Annual Income" was computed as Rs.2,44,800/- (Rs.20,400 /- x 12). Applying multiplier 16, based on the age of the victim, namely, 25 years and taking disability at 60%, the Tribunal arrived at Rs. 26,43,880/- towards "Loss of Income due to Disability" (i.e, Rs.2,44,800 x 18 x 60/100). That apart, the Tribunal has awarded nominal amounts under the other heads, namely, Rs.1 lakh towards "Pain and Suffering"; Rs.6,45,390/- towards " Medical Expenses"; Rs.50,000/- towards "Transport Expenses" and Rs.25,000/- towards "Extra Nourishment". In toto, the Tribunal has awarded Rs.34,64,230/- as compensation to the injured claimant, which appears to be just and reasonable. Hence, we do not find any merit in the appeal and the same is dismissed. No costs. Connected M.P. is closed.

12. Since the appellant Transport Corporation has already deposited 50% of the award amount and the claimant has also been permitted to withdraw the same, the balance award amount along with proportionate interest and costs, shall be deposited by the appellant Transport Corporation before the Tribunal within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the 1st respondent/claimant is permitted to withdraw the same.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

nv

To

The Motot Accident Claims Tribunal
II Additional District Judge,
Tirupur.

+1cc to Mr.A.Antony Arockiaraj, Advocate SR.No.10242

C.M.A. No. 3293 of 2014

RR(CO)
GN(04/04/2018)