

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.935 and 1281 of 2018
and
CMP.No.10286 of 2018

C.M.A.No.935 of 2018:

K.Kamaraj Appellant/Petitioner

...vs...

The Managing Director
State Express Transport Corporation,
Pallavan Salai,
Chennai-2. Respondent/Respondent

C.M.A.No.1281 of 2016:

The Managing Director
State Express Transport Corporation,
Pallavan Salai,
Chennai-2. Appellant/Respondent

...vs...

K.Kamaraj ... Respondent/Petitioner

C.M.A.No.935 of 2018:

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 19.02.2016, made in MCOP.No.1784 of 2013 on the file of the Motor Accident Claims Tribunal/(Special Sub Court) Cuddalore.

C.M.A.No.1281 of 2018:

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal

Order dated 19.02.2016, made in MCOP.No.1784 of 2013 on the file of the Motor Accident Claims Tribunal/(Special Sub Court) Cuddalore.

For Appellant : Mr.A.N.Viswanatha Rao
(Appellant in CMA.No.935/2018 and
Respondent in CMA.No.1281/18)

Respondent : Mr.K.S.Suresh
(Appellant in CMA.No.1281 of 2018 &
Respondent in CMA. No.935 of 2018)

COMMON JUDGMENT

The claimant/petitioner not being satisfied with the quantum of compensation awarded by the Tribunal, dated 19.02.2016, made in MCOP.No.1784 of 2013 on the file of the Motor Accident Claims Tribunal/(Special Sub Court) Cuddalore, has filed the appeal in CMA.No.935 of 2018 to enhance the quantum of compensation awarded by the Tribunal, while the respondent Transport Corporation filed the appeal in CMA.No.1281 of 2018 to set aside the award passed by the Tribunal.

2.By both side consent, these appeals are disposed of at the time of admission stage itself.

3.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

4.The case of the petitioner is that on 08.04.2013 at about 5.30 a.m., while the petitioner was riding his Tri-cycle in Guddalore - Chidhambaram Main Road, from South to North, while going near Pachayankuppam Housing Board, the respondent bus bearing Registration No.TN-01-AN-0148, came in the same direction at very high speed in a rash and negligent manner, hit the Tri-cycle of the petitioner from behind causing him grievous injuries as well as multiple fracture all over his body. The accident occurred due to the negligence of the respondent bus driver only. The petitioner was aged 37 years and was carrying on Tri-cycle hire business earning Rs.7,500/- per month. Due to the injuries suffered, he is unable to carry on his avocation resulting in loss of earning to him. Thus, the petitioner sought for a sum of Rs.25,00,000/- as compensation from the respondent Transport Corporation.

5.On the other hand, opposing the claim petition, the respondent Transport Corporation by filing counter contended

that their bus driver was no way responsible for the accident. On 08.04.2013, while the respondent bus was proceeding near Pachayankuppam Oil Mill at normal speed, the petitioner drove his Tri-cycle in a zigzag manner and without any signal suddenly tried to cross the road without noticing the oncoming bus. Even though the respondent bus driver reduced the speed and tried to stop the bus, the Tri-cycle dashed on the bus resulting in the accident. The negligence of the petitioner alone caused the accident. The claim of the petitioner about his age, income and avocation is denied. The claim of the petitioner is exorbitant. Thus, the respondent Transport Corporation sought for dismissal of the claim petition.

6. Before the Tribunal, the injured petitioner examined himself as P.W.1 and medical expert as P.W.2 and P.W.3, produced documents Ex.P1 to Ex.P9 to prove his claim. On the side of the respondent, neither oral nor documentary evidence was let in.

7. The Tribunal, on the basis of materials available on record, found the negligence of the respondent Transport bus driver alone caused the accident, passed an award for a sum of Rs.7,58,000/- as compensation to the petitioner. Not being satisfied with the quantum of award passed by the Tribunal, the petitioner/claimant preferred the appeal in C.M.A.No.935 of 2018 to enhance the award amount by entertaining the appeal and aggrieved over the said findings of the Tribunal, the respondent Transport Corporation has preferred the appeal in C.M.A.No.1281 of 2018 to set aside the award passed by the Tribunal.

8. Heard the learned counsel appearing for the Appellant/Petitioner and the learned counsel appearing for the respondent Transport Corporation and perused the materials available on record.

9. The learned counsel appearing for the appellant/petitioner/claimant contends that the Tribunal after rightly fixing the negligence on the respondent bus driver, failed to award adequate compensation to the petitioner. In view of the nature of injuries suffered by the petitioner, the Tribunal ought to have awarded higher amount under different heads than actually provided for the amount under challenge in the award. No amount was provided towards future prospects. The notional monthly income ought to have been fixed at Rs.5,000/-. The Tribunal failed to provide any amount for loss of amenities, attender charges and loss of income during treatment period. The appellant/petitioner/claimant sought for enhancement of the award amount by entertaining the appeal in C.M.A.No.935 of 2018 and to dismiss the appeal in C.M.A.No.1281 of 2018 filed by the respondent Transport Corporation.

10. Per contra, the learned counsel appearing for the respondent Transport Corporation contends that the Tribunal wrongly fixed the negligence on their bus driver, while the petitioner negligence alone resulted in the accident. The Tribunal erred in applying multiplier method, even though the petitioner suffered only fracture of femur and did not suffer any disability. The Tribunal also erred in fixing the disability at 50% and there is no valid reason given by the Tribunal for providing the loss of future prospects at 60%. The amount awarded by the Tribunal under different heads is highly excessive. Thus, the respondent Transport Corporation sought for setting aside the award passed by the Tribunal by entertaining the appeal in C.M.A.No.1281 of 2018 and to dismiss the appeal in C.M.A.No.935 of 2018 filed by the petitioner/claimant.

11. Both the appeals are filed on the issue of quantum only. Both side did not seriously contest the conclusion of the Tribunal, fixing negligence on the respondent bus driver. It is clear from P.W.1 oral evidence that on 08.04.2013 at about 5.30 a.m., while the petitioner was riding his Tri-cycle, the respondent bus came at high speed and dashed on the Tri-cycle from behind, causing grievous injuries to him. The Police also registered Ex.P1 First Information Report against the respondent bus driver only. It is clear from Ex.P2 Motor Vehicle Inspector's report that there is no mechanical defect in the respondent bus. Thus, the evidence of P.W.1 and the contents of Ex.P1 First Information Report clearly prove the negligence of the respondent bus driver alone caused the accident. On the other hand, the respondent did not examine any witness to contradict the claim of the petitioner. As such, the conclusion of the Tribunal that negligence of the respondent bus driver was the cause for the accident is correct and the same is confirmed.

12. The petitioner states that he was aged 37 years and by carrying on business of Tri-cycle hirer was earning Rs.7,500/- per month. However, as there was no proof for the monthly earning of the petitioner, the Tribunal fixed the notional income at Rs.5,000/- per month. Challenging the same, the learned counsel appearing for the appellant/petitioner contends that as the accident occurred during 2013, the petitioner could have earned Rs.300/- per day. Considering the avocation of the petitioner, this Court is of the view that it will be appropriate to fix the notional monthly income of the petitioner at Rs.6,500/-.

13. It is clear from Ex.P13 Accident Register copy that the petitioner was aged 36 years and the same is not disputed by the respondent. Thus, the petitioner's age is fixed as 36 years. Considering the injuries suffered by the petitioner, the Tribunal has correctly applied multiplier method. As the

petitioner was aged 36 years, the correct multiplier to be applied is 15. The petitioner deposed as P.W.1 and stated that he suffered grievous injuries in his right thigh and abrasions in his left face, while his left thigh was also injured. It is clear from Ex.P3 Accident Register that the right thigh injury suffered by the petitioner is grievous while other injuries are simple.

14.The petitioner was physically examined by P.W.2 and P.W.3 Doctors who issued Ex.P6 and Ex.P8 disability certificate. It is clear from the said documents that the petitioner suffered permanent disability. The letter given by the eye Doctor is produced as Ex.P9. According to P.W.2 Doctor, the petitioner's right thigh femur bone is broken and mal united. According to him, the petitioner will find difficulty in standing on his right leg. The movement of his right leg knee cap is reduced by 40°. Due to the injury, the petitioner will find it difficult to bend forward and do any hard work. Thus, P.W.2 Doctor assessed the disability suffered by the petitioner at 40%.

15. Likewise, the Surgeon, who deposed as P.W.3 stated that the Orbit bone of the left thigh of the petitioner was broken and reunited. He also stated that there is scare in the face of the petitioner. According to P.W.3, the left eye sight of the petitioner is reduced. It is further stated by P.W.3 that the petitioner's liver is affected and he has undergone surgery for correcting the same. Thus, for the above said injuries suffered by the petitioner, P.W.3 Doctor has fixed the disability at 50%.

16.Pointing it out, the learned counsel appearing for the petitioner/claimant contended that due to right thigh femur bone fracture as well as left thigh orbit bone fracture, the petitioner capacity to ride the Tri-cycle is affected resulting in total loss of income. The petitioner further contends that he has suffered functional disability. On the other hand, the learned counsel appearing for the respondent Transport Corporation disputed the same and stated that there is no difficulty for the petitioner to ride tri-cycle as he has recovered from the injuries. However, considering the disability assessed by P.W.2 and P.W.3 at 40% for the femur bone fracture and 50% for the injuries on the left thigh of the petitioner, it will be appropriate to fix the whole body disability at 50%.

17.Considering the nature of injuries suffered by the petitioner and he was aged 36 years and the functional disability suffered by him, it will be appropriate to fix 40% of the income towards future prospects. As such, the loss of future earning capacity is calculated as follows:-

Rs.6,500/- add 40% Rs.2,600/- = Rs.9,100/- x 12 =
Rs.1,09,200/- x 15 = Rs.16,38,000/- deducted 50% =
Rs.8,19,000/-.

18.The petitioner has produced Ex.P3 Accident Register Copy and Ex.P4 Discharge Summary issued by JIPMER Hospital, Pondicherry and the Photo taken to show the injuries as Ex.P5. Considering the nature of injuries suffered by the petitioner, he could not have attended to his work at least for two months. As such, the loss of income during treatment period is calculated as follows. Rs.6,500/- x 2 = Rs.13,000/-.

19.Considering the fracture in the right thigh and also the eye injury suffered by the petitioner, he would have need the assistance of an attender for atleast two months and therefore a sum of Rs.10,000/- is provided for the same. Considering the nature injuries suffered by the petitioner and also the period of treatment undergone by him, he would have suffered lot of pain and sufferings. As such it will be appropriate to provide a sum of Rs.50,000/- towards pain and sufferings instead of Rs.30,000/- provided by the Tribunal. Likewise, due to the injuries suffered, the petitioner is finding difficulty in sitting down walking and carrying on his normal activities. The movement of his right knee cap is reduced and the eye sight is also reduced, which will affect the day today functioning of the petitioner. Therefore, a sum of Rs.30,000/- is provided towards loss of amenities. As the petitioner is provided for loss of future earning capacity, pain and suffering and also loss of amenities, there is no need to provide for disability separately. As such, a sum of Rs.1,50,000/- given by the Tribunal as the disability compensation is hereby set aside. The amount provided by the Tribunal for Extra-nourishment, Transportation, Damage to Cloths and Medical Expenses are confirmed. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Extra-nourishment	10,000.00	10,000.00
2.	Transportation	10,000.00	10,000.00
3.	Damage to Clothing	3,000.00	3,000.00
4.	Attender Charges	-	10,000.00
5.	Medical Expenses	15,000.00	15,000.00
6.	Pain and sufferings	30,000.00	50,000.00
7.	Disability	1,50,000.00	-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
8.	Loss of amenities	-	30,000.00
9.	Loss of earning capacity	5,40,000.00	8,19,000.00
10.	Loss of income during treatment	-	13,000.00
	Total	7,58,000.00	9,60,000.00

Accordingly, the sum of Rs.7,58,000/- Awarded by the Tribunal is modified and the same is enhanced to Rs.9,60,000/-.

20. C.M.A.No.935 of 2018

In the result, this appeal is partly allowed. No costs. The amount of Rs.7,58,000/- awarded by the Tribunal dated 19.02.2016, made in MCOP.No.1784 of 2013 on the file of the Motor Accident Claims Tribunal/(Special Sub Court) Cuddalore is hereby enhanced to Rs.9,60,000/-. The respondent Transport Corporation is directed to deposit the entire Award amount of Rs.9,60,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. Consequently, connected CMP. is closed.

21. C.M.A.No.1281 of 2018

In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To

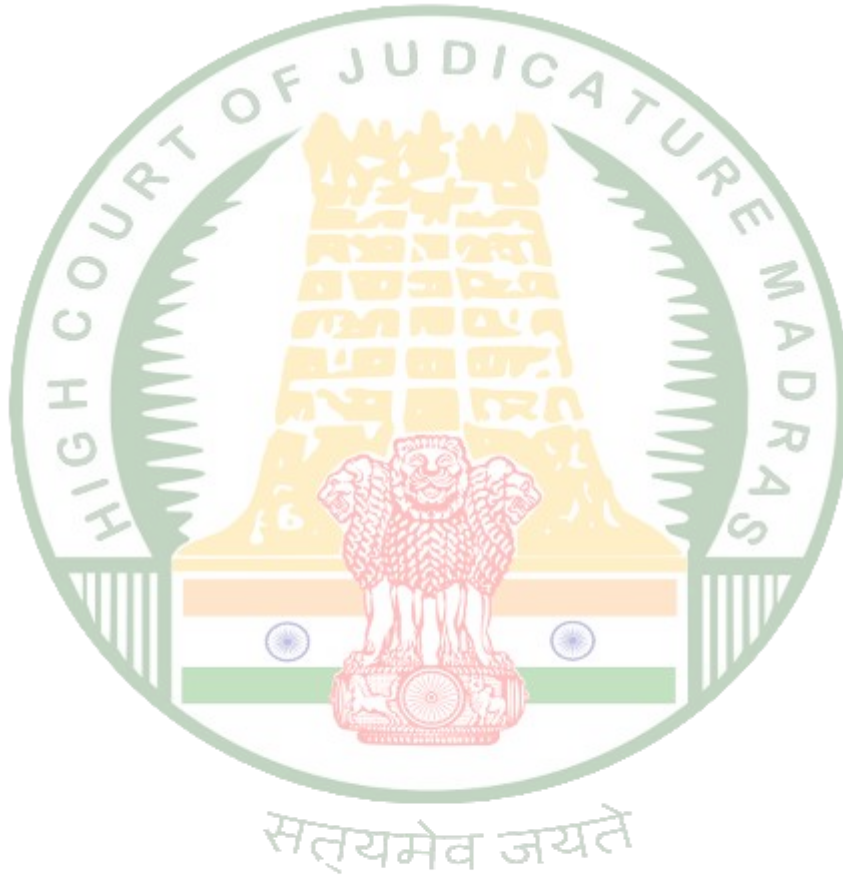
1.The Special Sub Court,
Motor Accident Claims Tribunal,
Cuddalore.

2. The Section Officer,
VR section, High court,
Madras.

+1cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.44431

C.M.A.Nos.935 and 1281
of 2018

SJ(CO)
GN(02/08/2018)



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