

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1680 of 2013
and Cros.Obj.No.62 of 2013

C.M.A.No.1680 of 2013:-

The Managing Director,
Tamil Nadu State Transport Corporation,
Limited, Division -II,
Villupuram. ...Appellant/Respondent

Versus

K.Palani ...Respondent/Petitioner

Cross Objection.62 of 2013:-

K.Palani ...Cross Objector

Versus

The Managing Director,
Tamil Nadu State Transport Corporation,
(VPM)Limited,
Villupuram. ...Respondent

Prayer in CMA.No.1680 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2013 made in M.C.O.P.No.3086 of 2012 on the file of the Motor Accident Claims Tribunal, IV Court Small Causes, Chennai.

Prayer in Cross Objection: Cross Objectors file this memorandum of cross objections under Rule 22 of Order 41 of the Code of Civil Procedure 1908 praying to enhance the compensation from Rs.12,48,800/- to Rs.25,00,000/- in MCOP NO.3086/12 on the file of the Motor Accident Claims Tribunal Small Causes Court, Chennai.

For Appellant

In C.M.A.No.1680 of 2013 : Mr.S.Sairaman

For Respondent In Cross Objection :

For Respondent
In C.M.A.No.1680 of 2013 : Mr.M.Kother Adam
For Appellant In Cross Objection :

J U D G M E N T

The above Civil Miscellaneous Appeal and Cross Objection are filed against the judgment and decree dated 09.01.2013 made in M.C.O.P.No.3086 of 2012 on the file of the Motor Accident Claims Tribunal, IV Court Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 26.05.2010 at about 4.00 hours, while the petitioner was travelling as passenger in the respondent Corporation bus bearing Registration No.TN-21-N-1141 from Thindivanam to Chennai, while going near Padalam Koot Road, due to high speed, in which the bus was driven by its driver dashed against the lorry which was going ahead of the bus, resulting in the petitioner suffering grievous injury. The accident occurred only due to the negligence of the respondent bus driver. The petitioner was aged 32 years and by carrying on Gunny Bags vending business was earning Rs.10,000/- per month. Due to injury suffered in the accident, he is unable to attend to his normal work. The permanent disability suffered is 100%. Hence, the petitioner sought for a sum of Rs.25,00,000/- as compensation from the respondent.

4. On the other hand, opposing the claim of the petitioner, by filing counter, the respondent/Transport Corporation contended that the accident did not occur in the manner alleged by the petitioner. While the respondent bus in Route No.79 P/SPL was proceeding in Chennai - Villupuram Road at normal speed around 4 a.m., near Padalam Koot Road, an unknown container lorry going in front of the respondent bus without any indicator light suddenly applied break and in that moment the respondent bus dashed on the back side of the lorry, resulting in the accident. The accident occurred only due to lorry driver stopping the vehicle suddenly. As such, the respondent is not liable to pay any compensation. Thus, the respondent sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and three other witnesses as P.W.2 to P.W.4 produced document Exs.P.1 to P.15 to prove his claim. On the side of the respondent R.W.1 was examined, but no document was produced. The Tribunal, on the basis of available evidence on record, found that the negligence of the respondent bus driver alone caused

the accident passed an award for a sum of Rs.12,48,800/- payable by the respondent to the petitioner. Aggrieved over the said finding of the Tribunal, the respondent/transport Corporation has come forward with the present appeal in C.M.A.No.1680/2013 seeking to set aside the award passed by the Tribunal, whereas, the petitioner/claimant being not satisfied with the quantum of the award has come forward with the Cross Objection No.62/2013 seeking enhancement of the quantum of the award.

6. The learned counsel for the respondent/Transport Corporation contended that the Tribunal without appreciating the evidence available on record wrongly fixed the negligence on the part of the respondent bus driver as the cause for the accident. Since two vehicles are involved in the accident, the owner and insurer of the lorry, ought to have been impleaded in the petition, but as the petitioner failed to do so, and the same is fatal to the case of the petitioner. The amount awarded by the Tribunal is highly excessive. Thus, the respondent/Transport Corporation sought for setting aside of the award passed by the Tribunal by allowing the appeal.

7. Per contra, the learned counsel for the petitioner/claimant contends that the Tribunal without appreciating the serious nature of injury suffered by the petitioner passed an award providing for very meagre amount as compensation. The petitioner has suffered spinal cord injury and also fracture in his right leg ankle. Due to the injury suffered in the accident, the petitioner is not having any movement below his hip and he is having no sensation below the hip. As a result of which, he is having no control over passing of urine and motion. The petitioner has suffered permanent disability and there is no scope of any recovery in the future. The petitioner, being 32 years old has suffered 100% disability and as such, the amount awarded by the Tribunal is very low. Further, the petitioner has to undergo treatment for his lifetime as per the Doctor evidence, but the Tribunal failed to provide any amount towards future medical expenses. The petitioner's wife and his minor sons are suffering due to loss of income and also the mental agony caused by the vegetative status of the petitioner. The matrimonial life is also affected. Hence, the petitioner seeks enhancement of the award amount by allowing the Cross Objection.

8. Heard both sides and perused the available materials on record.

9. The accident that took place on 26.05.2010, the petitioner who travelled as a passenger in the respondent/Transport Corporation bus suffered the following injuries, D12 L1 Spinal bone fracture and dislocation with

parapleg, Chest injury with multiple ribs fracture on right and fracture on right leg elbow and on that ground the petitioner filed the claim petition seeking a sum of Rs.25,00,000/- as compensation.

10. On contest, the Tribunal, on the basis of available evidence on record, found that the negligence of the respondent bus driver alone caused the accident passed an award for a sum of Rs.12,48,800/-. The same is challenged by the respondent/Transport Corporation as well as the petitioner/claimant as stated above. The petitioner who deposed as P.W.1 clearly stated that while travelling in the respondent bus from Thindivanam to Chennai, as the bus was driven in a rash and negligent manner near Padalam Koot Road, the bus dashed against the lorry which was going ahead of the bus. The police registered a case as evidenced by Ex.P.1 - F.I.R against the bus driver only. Thus, as per P.W.1 evidence and Ex.P.1 - F.I.R, the negligence of the respondent bus driver alone caused the accident. On the other hand, there is no contra evidence let in by the respondent, to disprove the claim of the petitioner. The traffic inspector of the respondent corporation who deposed as R.W.1 is not an eye-witness to the occurrence. Admittedly, the complaint was lodged with the police by the conductor of the respondent bus only who lost his both legs and subsequently died. It is clear from the contents of Ex.P.1 - F.I.R that the accident occurred only due to rash and negligent driving by the driver of the bus, resulting in the bus dashing in the back side of the lorry going ahead of it. Even assuming, the lorry stopped suddenly, as both the vehicles were going in highways, the respondent bus driver ought to have maintained safe distance from the vehicle which was going ahead of the bus. The failure on the part of the respondent bus driver to maintain safe distance alone has caused the accident. As such, the conclusion of the Tribunal, that the negligence of the respondent bus driver alone caused the accident is just and proper and the same needs no interference.

11. The petitioner states that he suffered the following injuries, viz., D12 L1 Spinal bone fracture and dislocation with parapleg, Chest injury with multiple ribs fracture on right and fracture on right leg elbow and multiple injuries through out his body, in the accident. According to him he took treatment as inpatient in Chengalpet Medical College Hospital and thereafter in Sri Ramachandra Medical Centre, Chennai. Subsequently, he took treatment in M.R.Hospital also. To prove the same, the petitioner produced the discharge summary as Exs.P.2 to P.5. It is also pointed out that the petitioner has undergone surgery on 07.06.2010 and on that date D8 laminectomy and posterior stabilization D8-D10 was done and again he underwent surgery on 16.06.2010 for debridement/eternal fixation and also SSG from

left thigh to the donor area was done for post traumatic raw area right ankle and again underwent surgery on 29.07.2010 for removal of external fixation. It is therefore clear that the petitioner was taking treatment continuously for over a period of time.

12. The Doctor, who deposed as P.W.3 stated that the petitioner has suffered total permanent disability of 100% and produced disability certificate issued by him as Ex.P.13 and X-Ray taken by him and X-Ray reports as Exs.P.11 and P.12. The photograph with CD showing the nature of injury suffered by the petitioner is produced as Ex.P.10. As per the evidence of P.W.3, Doctor, the petitioner right ankle is bent and due to which his movement is restricted. It is also clear from the evidence let in by the petitioner that the body below the hip is not functioning and the petitioner is not able to control passing of the urine and motion. According to the petitioner, both his legs are not functioning properly. The Doctor, who deposed as P.W.3 also corroborated the version given by the petitioner as P.W.1. It is clear from the evidence of P.W.3, Doctor, that the stomach portion as well as the legs of the petitioner are not functioning properly as the spinal cord is affected. The same was partly rectified by putting screws and plates. The petitioner's back is bent and he is unable to control passing of urine and motion. Both the legs of the petitioner is not functional. P.W.3, Doctor, stated that the petitioner has to spend his entire life in two wheel chair only and also need to undergo physiotherapy treatment for entire life time. It is also clear from the P.W.3 Doctor evidence that the petitioner suffered injury in his right leg which require skin grafting. Thus, it is clear from the evidence of P.W.1 as well as P.W.3 Doctor that the petitioner is not in position to move around and will not be able to function normally as the body below his hip is totally non-functional. It is clear from the evidence on record that the mobility of the petitioner is totally affected and he cannot do any works on his own and has to depend upon somebody even for day to day personal works. As per medical evidence, the body of the petitioner has become non-functional below the hip and as such, the disability suffered by him has to be fixed at 100%.

13. The petitioner states that he was aged 32 years at the time of the accident. The driving license of the petitioner is produced as Ex.P.9, wherein, his Date of Birth is mentioned as 05.03.1978. Hence, his age on the date of accident is 32 years. The petitioner claims that he was a Gunny bag vendor earning Rs.10,000/- per month. However, there is no proof for the same produced by the petitioner. As such, the Tribunal fixed the notional monthly income of the petitioner at Rs.4,500/-. Considering the fact that the accident occurred during 2010, it

will be appropriate to fix the notional monthly income of the petitioner at Rs.5,000/-.

14. The petitioner being aged 32 years and as he suffered 100% disability, it will be appropriate to add 40% income towards future prospects and the multiplier '17' is to be applied for calculating loss due to disability. Thus, the compensation for disability is calculated as follows:-

$$[(Rs.5000 \times 40\%) + 5000 \times 12 \times 17] = Rs.14,28,000/-$$

Thus, a sum of Rs.14,28,000/- is granted as compensation under the head "Disability compensation".

15. The petitioner states that he is taking continuous treatment and he is unable to attend to his normal work. It is also clear from the evidence of P.W.3, Doctor, that the petitioner cannot move around on his own except in wheel chair. As the petitioner was aged 32 years, his average life time can be of another 25 years. Therefore, it will be appropriate to provide for a sum of Rs.1,00,000/- towards attender charges. Further as per P.W.3 Doctor evidence, the petitioner will need continuous medical treatment and also physiotherapy throughout his life time, a sum of Rs.1,00,000/- is awarded towards future medical expenses.

16. Due to injury suffered by the petitioner as stated above he has suffered functional disability. The organs below his hip are not functioning. He also underwent treatment including surgery for a length of period. As such, the petitioner has to be compensated for the Pain and Suffering as well as mental agony underwent by him. Hence, a sum of Rs.1,00,000/- is provided towards Pain and Suffering. The petitioner being a married man and aged only 32 years his matrimonial life is affected. As such, it will be appropriate to provide for a sum of Rs.2,00,000/- towards loss of amenities. The petitioner has gone to various hospital for treatment and he will need to go to the hospital for treatment. As such, it will be appropriate to provide for transportation expenses, hence, a sum of Rs.50,000/- is provided towards transportation. Likewise, for extra nourishment Rs.50,000/- is provided. The petitioner has produced Medical bills as Exs.P.6 and P.7. On the basis of the same, a sum of Rs.2,12,589.27/- is provided for the medical expenses already incurred by him.

17. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal (in Rs)	Amount awarded by this Court (in Rs)
1	Loss of disability	8,26,200.00	14,28,000.00
2	Attender Charges	25,000.00	1,00,000.00
3	Future Medical Expenses	15,000.00	1,00,000.00
4	Pain and Suffering	50,000.00	1,00,000.00
5	Loss of Amenities	40,000.00	2,00,000.00
6	Transportation	25,000.00	50,000.00
7	Extra nourishment	20,000.00	50,000.00
8	Medical expenses	2,12,589.27	2,12,589.27
9	Loss of income	9,000.00	-
10	Damages of Clothes	1,000.00	-
12	Total	12,48,789.27	22,40,589.27
			Round off
			22,41,000.00

18. In the result,

(i) The Cross Objection filed by the petitioner/claimant is allowed by enhancing the award to Rs.22,41,000/- from Rs.12,48,789.27/-. The C.M.A.No.1680 of 2013 filed by the Insurance Company is dismissed.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the respondent/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the petitioner/claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

- (v) The petitioner/claimant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount, if need be.

No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Motor Accident Claims Tribunal,
IV Court Small Causes,
Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

+ 1 cc to Mr.S. Sairaman, Advocate Sr.29460

+ 2 ccs to Mr.S. Kother & Adam Advocate SR.29343

C.M.A.No.1680 of 2013
and

Cross Objection No.62 of 2013

GMR(CO)
EU(28/06/2018)

सत्यमेव जयते

WEB COPY