

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR. JUSTICE P.D.AUDIKESAVALU

C.M.A.NO.2854 OF 2013

AND

M.P.NO.1 OF 2013

The Managing Director,
Karnataka State Road Transport Corporation Ltd.,
Bangalore - 560 027.

...Appellant/1st Respondent

Vs.

1. Sri. P. R. Rajiv Shankar @ Rajiv Nair.
2. M/S. Indian Domestic Service,
No.70/2, Pattandur Agraharam,
K.P. Puram Hobli, Bangalore - 560 066.
3. The New India Assurance Company Ltd.,
Officer's Line, Vellore.
4. ICICI Lombard General Insurance Company Ltd,
No.140, 2nd and 3rd Floor,
Nungambakkam High Road, Chennai - 600 034.

...Respondents 1 to 4/Petitioner & Respondents 2 to 4

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 04.07.2012 made in MCOP No.597 of 2008 on the file of the Motor Accident Claims Tribunal Chief Judicial Magistrate, Vellore.

For Appellant : Mr. T.Thiyagarajan
For Respondent-1 : Mr.S.P.Yuaraj

J U D G M E N T

(Order of the Court was delivered by R.Subbiah,J.)

This Civil Miscellaneous Appeal is filed by the Transport Corporation challenging the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) dated 04.07.2012 made in M.C.O.P. No.597 of 2008.

2. The appellant is the Transport Corporation, the first respondent is the injured claimant. Hereinafter, they shall be referred to as such, through out this judgment and decree.

3. It is the case of the claimant that on 19/04/2008, at about 2.00 am, while he was travelling as passenger in the bus bearing Regn.No.KA 06 F 0477 belonging to the appellant-Transport Corporation from Bangalore to Chennai City, due to rash and negligent driving of the driver of the bus, it hit on the rear side of a Container Lorry, bearing Regn No. KA 03 B 6283, as a result of which, the passengers, who travelled in it have sustained injuries and the claimant herein is one among them. In the said accident, the claimant sustained multiple injuries all over the body. At the time of the accident, the claimant was working as Software Engineer in Bangalore and was earning not less than a sum of Rs.25,000/- per month, and hence, he made a claim for a sum of Rs.20,00,000/- as compensation.

4. In order to prove the claim before the Tribunal, the claimant/injured examined himself as P.W.1, besides examining a Doctor Shanmugasundaram, as P.W.2 and marked 13 documents as Ex.P.1 to Ex.P.13. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1, besides examining two other witnesses as R.W.2 and R.W.3 and two documents were marked as Ex.R.1 & Ex.R.2.

5. The Tribunal, after analyzing the entire evidence, both oral and documentary has come to the conclusion that the accident was on account of of the rash and negligent act of the driver of the bus belonging to the Transport Corporation. By coming to such a conclusion, the Tribunal has calculated the compensation amount under different heads and passed an award for a total sum of Rs.13,78,200/-. The break up details of the compensation amount awarded by the Tribunal are as follows :-

Loss of income	: Rs. 11,23,200/-
Transportation	: Rs. 5,000/-
Extra Nourishment	: Rs. 10,000/-
Attendant Charges	: Rs. 10,000/-
Loss of Amenities	: Rs. 50,000/-
Medical Expenses	: Rs. 1,40,000/-
Pain and suffering	: Rs. 40,000/-

Rs. 13,78,200/-

6. Aggrieved over the quantum of compensation awarded by the Tribunal under the head of Loss of Income, the State

Transport Corporation has filed the present Appeal.

7. The learned counsel appearing for the appellant/Corporation has contended that it is no doubt true that due to the said accident, the claimant had sustained fracture at PIP Joint, Femur, Tibia, but, it cannot be stated that owing to the said injuries, the claimant was unable to perform his avocation as Software Engineer and the Tribunal based on Ex.P.2, Wound Certificate, ought not to have awarded such an exorbitant sum of Rs.11,23,200/- by adopting the multiplier of '18', while determining the compensation towards Loss of Income, as the said injury will have no bearing on the avocation of the claimant, i.e. Software Engineer. Thus, the learned counsel submitted that the compensation amount under the head of loss of income needs proper reduction as the same is on the higher side.

8. Countering the submissions made by the learned counsel for the appellant/Corporation, it is submitted by the learned counsel for the second respondent/claimant that the injured claimant was working as Software Engineer at Infosys Company, and due to the accident, he sustained the following injuries i) fracture of dislocation of PIP joint of RT middle finger, ii) closed fracture left femur, iii) closed fracture of tibia, iv) closed fracture of medial malleolus and iv) left ulna closed fracture, and initially, he underwent treatment at Ambur Government Hospital, and subsequently, at C.M.C. Hospital from 20.04.2008 to 02.05.2008, and thereafter, at Sushrusha Hospital from 04.05.2008 to 14.05.2008. Due to the fracture sustained, he underwent a surgery on 06.05.2008, where, Plate and Screws were fixed. All these would per se prove that, due to the said fractures, he is unable to carry on his avocation as Software Engineer, as he cannot operate the Computer. Therefore, the learned counsel contended that the multiplier adopted by the Tribunal cannot be said to be wrong. Thus, he sought for confirmation of the award.

9. Keeping in view the submissions made on either side, we have carefully gone through the entire materials available on record. We find that on account of the accident, the claimant had sustained the following fracture, as could be seen from Ex.P.2/Discharge Summary issued by C.M.C. Hospital:-

- i) Fracture of dislocation of PIP joint of RT middle finger;
- ii) Closed fracture left femur;
- iii) Closed fracture of tibia;
- iv) Closed fracture of medial malleolus
and
- v) Left ulna closed fracture.

10. As rightly pointed out by the learned counsel for the appellant/Transport Corporation, the fractures sustained by the claimant will not have any bearing on the avocation carried out by him who was working as a Software Engineer. On a perusal of the evidence available on record, we find that except the bald statement made by P.W.2, no tangible evidence was available to show that the claimant was not in a position to carry on his avocation. Furthermore, we are also of the opinion that the nature of injuries sustained by the claimant will have no bearing on his avocation and on completion of treatment after some time, he can very well continue his avocation. When such being the position, we are of the opinion that the multiplier method adopted by the Tribunal cannot be justified. Hence, the sum of Rs.11,23,200/- awarded by the Tribunal for loss of income is hereby set aside. However, we are of the opinion that he is entitled for compensation under the head of Disability. The Doctor, who was examined as P.W.2 had categorically stated that, the disability suffered by the claimant is 40%. Hence, considering the factual background of the case, we feel that a sum of Rs.3,000/- could be fixed as compensation for each percentage of the disability. If so awarded, the compensation works out to Rs.1,20,000/- under the head Disability. Hence, a sum of Rs.1,20,000/- is hereby awarded under the head of Disability.

11. That apart, from a perusal of the materials available on record, We find that the claimant was taking treatment from 20.04.2008 to 02.05.2008, and thereafter, from 04.05.2008 to 14.05.2008. Considering the long duration of treatment undergone by the victim, we are of the opinion that the sum of Rs.10,000/- awarded by the Tribunal towards attender charges needs proper enhancement. Hence, the same is hereby enhanced from Rs.10,000 to Rs.25,000/-. Similarly, as the sum of Rs.40,000/- awarded by the Tribunal for pain and sufferings is not adequate, the same is hereby enhanced to Rs.90,000/-. Likewise, the sum of Rs.10,000/- awarded by the Tribunal for Extra-nourishment is also enhanced to Rs.50,000/-. Further, We find that the Tribunal has awarded Rs.50,000/- towards Loss of Amenities, which is on the lower side considering the nature of injuries sustained by the claimant. Hence, the same is enhanced to Rs.1,50,000/-. The sum of Rs.1,40,000/- awarded by the Tribunal for Medical Expenses is supported by medical bills; hence, the same is hereby confirmed. Consequently, the total sum of Rs.13,78,200/- awarded by the Tribunal is hereby modified and reduced to Rs.6,00,000/-. The break up details of the modified/reduced compensation amount are as follows_

Disability	: Rs.1,20,000/-
Transportation	: Rs. 25,000/-
Extra Nourishment	: Rs. 50,000/-
Attendant Charges	: Rs. 25,000/-
Loss of Amenities	: Rs.1,50,000/-
Medical Expenses	: Rs.1,40,000/-
Pain and suffering	: Rs. 90,000/-

Total :Rs. 6,00,000/-

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the total sum of Rs.13,78,200/- awarded by the Tribunal is modified and reduced to Rs.6,00,000/-. The appellant/Transport Corporation is directed to deposit the modified compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the entire modified amount with proportionate interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Vellore.

Copy to:

The Section Officer, VR Section,
High Court, Madras.(2 copies)

+1cc to Mr.Mr. T.Thiyagarajan, Advocate, S.R.No.13910
+1cc to Mr.S.P.Yvaraj, Advocate, S.R.No.14170
+1cc to Mr.J.Chandran, Advocate S.R.No.11377

C.M.A.No.2854 of 2013

nr 06/07/2018