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THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 15.04.2019

JUDGMENT DELIVERED ON : 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.2089 OF 2010 AND CMA.NO.2808 OF 2010

&

MP.NO.1 OF 2010

C.M.A.No.2089 of 2010:

The Managing Director,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
No.3/137, Salamedu,
Vazhudhareddy Post, Villupuram Taluk,
Pin Code 605 401.

... Appellant

Versus

R.Palani

... Respondent

C.M.A.No.2808 of 2010:

R.Palani

... Appellant/Petitioner

Versus

The Managing Director, T.N.S.T.C (Villupuram) Ltd.,
No.3/137, Salamedu,
Vazhudhareddy Post, Villupuram Tk.,
Pin Code 605 401.

... Respondent/Respondent

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.10.2009 made in M.C.O.P.No.494 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-I, Tindivanam.

Mr.S.V.Vasanthakumar: for Appellant in CMA.2089/2010 &
for Respondent in CMA.2808/2010

Mr.N.Manikandan : for Respondent in CMA.2089/2010 &
: for Appellant in CMA.2808/2010



COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the award dated 12.10.2009 made in M.C.O.P.No.494 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-I, Tindivanam.

2.Both the appeals are arising out of the same award and hence they are disposed of by this common judgment. The parties are referred to as per the rank in claim petition, for the sake of convenience.

3.The claimant has preferred the appeal in CMA.No.2808 of 2010 seeking enhancement of compensation on the ground that the compensation awarded by the Tribunal is too low. The Transport Corporation has filed CMA.No.2089 of 2008 alleging that the manner of the accident as spoken by RW.1 viz., staff of the vehicle, was not properly analysed by the Tribunal and fixed liability has been erroneously on the Transport Corporation. Hence these appeals.

4.The claimant has preferred MCOP.No.494 of 2008 alleging that on 27.01.2008 at about 6.00 pm, when he was standing along with his friend, one Sekar, with his two wheeler bearing Registration No.PY-01-D-5834 in front of Santhaimedu Mahathma Gandhi Madhu Adimaigal Meetpu Maiyam at the extreme left side of the road, a Bus bearing Registration No.TN-32-N-2963 belonging to Tamil Nadu State Transport Corporation Limited came from Tindivanam to Gingee direction with high speed, in a rash and negligent manner and dashed against the standing claimant. In the said impact, the claimant suffered crushed bone injuries on his left hand and other simple injuries on his head and all over the body. Immediately, the claimant was taken to the Government Hospital at Tindivanam, where he took first aid treatment and then he was referred to the Government General Hospital, Puducherry, there his left hand was amputated. According to the claimant, the accident occurred due to the rash and negligent manner of driving of the driver of the Transport Corporation Bus. Therefore, the claimant has filed the claim petition, claiming a sum of Rs.25 lakhs as compensation.

5.The respondent/Transport Corporation filed a counter statement, denying the manner of the accident and denying the age, avocation and alleged income of the injured/claimant. Further, they averred that after investigation by the Police, the complaint was closed as mistake of fact, since the accident was invited by the claimant himself.

6.Before the Tribunal, on the side of the claimant, the claimant examined himself as PW.1, besides examining one



Dr.Sekar as PW.2 and Exs.P1 to Ex.P16 were marked. On behalf of the respondents, one Padmanabhan, staff of Transport Corporation was examined as RW.1 and one document Ex.R1/ copy of final report was marked.

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7.Considering the pleadings and the oral and documentary evidence, the Tribunal has come to the conclusion that the bus driver was responsible for the accident by his rash and negligent driving and awarded compensation of Rs.3,56,000/- to the claimant.

8.I have heard learned counsel on either side.

9.It is the specific contention of the learned counsel for the claimant that even though the manner of the accident as spoken by RW.1/ the driver of the Bus and Ex.R1/final report filed by the Police, wherein the case has been closed as 'mistake of fact' were relied only the Transport Corporation, after perusing the evidence of RW.1, the manner of the accident and also taking note of the fact that Exs.P1/Copy of FIR and Ex.P2/Copy of MVI report, the Tribunal on appreciation of the fact has rightly come to the conclusion that PW.1/Pazhani was standing with two wheeler in front of Santhaimedu Mahathma Gandhi Madhu Adimaigal Meetpu Maiyam and the accident had taken place due to the rash and negligent driving of the driver of the Transport Corporation Bus. Such finding, in my considered view, does not warrant any interference. Hence, the appeal filed by the Transport Corporation is liable to be dismissed.

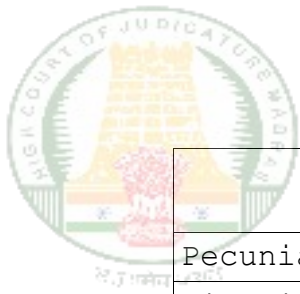
10.On perusal of the records, it is seen that on the date of accident i.e., on 27.01.2008, the claimant's age was mentioned in the claim petition as 32 years. But, as per Ex.P10/ Copy of Pan Card of the claimant, his date of birth is 10.04.1975. Hence, at the time of accident, the claimant was aged 33 years. PW.2/Doctor, who examined the injured claimant and issued Ex.P15/disability certificate fixed disability at 80% and his evidence indicates that the claimant sustained bone crush injuries on his left hand and forearm elbow, due to which his left forearm was amputated and for that the claimant took treatment as in-patient for 20 days, which was mentioned in the discharge slip/Ex.P3. Ex.P3/discharge slip clearly shows that the length of his left hand, which was 30 cm, after it has been reduced to 20 cm after the accident, and accordingly, PW.2/Doctor, assessed the disability at 80% based upon the Workmen's Compensation Act. After perusing the above said documents and also perusing the evidence of PW.2/Doctor, the Tribunal has rightly taken the disability of the claimant at 80% and the same is hereby confirmed.



11. On a perusal of Ex.P8/Income tax particulars regarding the income of the claimant, it is seen that he was working as a Salesman cum Driver, doing two private jobs in the same concern (Meera Palani Products), earning a sum of Rs.16,000/- per month and as per Income Tax Saral Form No.2D, his gross income is mentioned as Rs.1,14,917/- for the assessment year 2005-2006 and the same was filed on 16.09.2005; for the assessment year 2006-2007, his gross income is at Rs.1,43,158/- and this return had been filed on 22.11.2006 and for the assessment year 2007-2008, his gross income was mentioned as Rs.1,61,353/-, which was filed on 14.03.2008, but the accident has taken place on 27.01.2008. The income fixed by the Tribunal, taking note of the Income tax returns filed after the accident, cannot be accepted. However, the average gross income of the last three assessment years indicates the notional income of the claimant was not below Rs.1,00,000/-. Therefore, the average notional income is fixed at Rs.1 lakh per year.

12. Taking into consideration the age of the injured/claimant as 33 years; the amputation on his left hand; loss of earning capacity, and the fact that he cannot perform his work as before, this Court is of the considered view that the accidental injuries sustained by the claimant satisfy the criteria laid down by the Honourable Supreme Court in the case of Rajkumar Vs. Ajaykumar & another reported in 2010 (2) TN MAC 581 SC, to award compensation by adopting multiplier method and as per following the decision of the Hon'ble Supreme Court case in Sarala Verma and Others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 SC, considering the age of the injured at 33 year, the multiplier of '16' is adopted and fixing the claimant's 80% disability treating it as functional disability. The notional annual income of the claimant is arrived at Rs.1,00,000/- and works out pecuniary loss of income to Rs.12,80,000/- ($\text{Rs.1,00,000} \times 16 \times 80/100$).

13. This Court feels it just and proper to enhance the award of the Tribunal towards loss of income during the period of treatment, from Rs.30,000/- to Rs.45,000/-. In respect of the pain and suffering a sum of Rs.15,000/- and for Extra-nourishment a sum of Rs.5,000/- awarded by the Tribunal is hereby maintained. For transport and medical expenses, a sum of Rs.2,093/- granted by the Tribunal is split into separate heads and this Court awards a sum of Rs.1,000/- towards Transport charges and a sum of Rs.2,093/- towards Medical expenses. Having regard to the period of hospitalization, the Tribunal awarded a sum of Rs.6,000/- towards Attender charges and the same is just and proper. The Tribunal did not award any amount towards Loss of Amenities, hence, this Court awards a sum of Rs.10,000/- towards the same. Thus, the break-up details of the enhanced and modified award amount are as follows:-



Head	Amount awarded by the Tribunal	Amount granted by this Court
Pecuniary loss	-	Rs.12,80,000/-
Disability	Rs.3,00,000/-	-
Loss of income during treatment	Rs.30,000/-	Rs.45,000/-
Pain and suffering	Rs.15,000/-	Rs.15,000/-
Extra-nourishment	Rs.5,000/-	Rs.5,000/-
Transport and Medical expenses	Rs.2,093/-	-
Transport charges	-	Rs.1,000/-
Medical expenses	-	Rs.2,093/-
Attender charges	Rs.6,000/-	Rs.6,000/-
Loss of amenities	-	Rs.10,000/-
Total	Rs.3,56,000/- (actually it is Rs.3,58,093/-)	Rs.13,64,093/-

14.The typographical error that had crept in while arriving at the total compensation awarded by the Tribunal, i.e. Rs.3,56,000/-, which actually should be Rs.3,58,093/- is noted.

15.In the result,

(i) the CMA.No.2089 of 2010, filed by the Transport Corporation is dismissed.

(ii) the CMA.No.2808 of 2010, filed by the claimant is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.3,58,093/- to Rs.13,64,093/-.

(iii) the Transport Corporation is directed to deposit the enhanced amount of compensation as determined in this appeal together with costs and interest rate of 7.5% per annum, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of copy of this Judgment.

(iv) on such deposit being made, the claimant is permitted to withdraw the same with accrued interest, less the amount if any, already withdrawn.

(v)The claimant shall pay necessary Court fee, if any, on the enhanced compensation.



(vi) There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Additional District Judge,
Fast Track Court-I, Tindivanam.

Copy To

The Section Officer,
V.R.Section, High Court,
Madras - 104.

+1cc to Mr.S.Sankaralingam, Advocate, S.R.No.67840
+1cc to Mr.S.V.Vasanthakumar, Advocate, S.R.No.68439

C.M.A.No.2089 of 2010 and CMA.No.2808 of 2010
&
MP.No.1 of 2010

SSV(CO)
CS/27/09/2019