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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2019
Pronounced on : 24.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.1726 to 1728 of 2011
and
M.P.Nos.1 of of 2011 (3 cases)

The Managing Director,
Karnataka State Road Transport Corporation,
Central Office, Shanti Nagar,
K.H.Road, Bangalore.

... Appellant
in all C.M.As

Versus

Raja

... Respondent
in C.M.A.1726 of 2011

Thanikachalam

... Respondent
in C.M.A.1727 of 2011

Saridha

... Respondent
in C.M.A.1728 of 2011

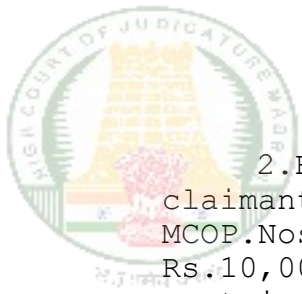
Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Common Judgment and Decree dated 05.08.2010 made in M.C.O.P.Nos.217, 218 and 219 of 2009 on the file of the Motor Accident Claims Tribunal, (Principal Subordinate Judge), Thiruvannamalai.

For Appellant : Mr.K.B.Arul
in all C.M.As

For Respondents : Mr.B.Jawahar
in all C.M.As

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed by the appellant/Karnataka State Road Transport Corporation, challenging the Common Judgment and Decree dated 05.08.2010 made in M.C.O.P.Nos.217, 218 and 219 of 2009 on the file of the Motor Accident Claims Tribunal, (Principal Subordinate Judge), Thiruvannamalai.



2. Before the Tribunal, the respondents herein are the claimants, who have filed the above said claim petitions in MCOP.Nos. 217, 218 and 219 of 2009, seeking compensation of Rs.10,00,000/-, Rs.7,00,000/- and Rs.3,00,000/- for the injuries sustained by them in a road accident that took place on 17.08.2008.

3. As the appeals arise out of one and the same award, they are taken up for hearing together and are disposed of by this common Judgment.

4. The brief facts of the case of the claimants before the Tribunal are as follows:-

On 17.08.2008, at about 18.00 hours, the claimant/Raja in M.C.O.P.No.217 of 2009, drove the two wheeler bearing Registration No.JK-01-2856 along with two persons, who are none other than the claimants in M.C.O.P.Nos.218 and 219 of 2009. When the two wheeler was proceeding from Iyyampalayam to Nachipattu, near Kolapadi Village at Thiruvannamalai to Chengam main Road, on the left side of the road in a mud path, the bus bearing Registration No. KA 01 F 8147, which was driven by its driver in a rash and negligent manner, dashed against the two wheeler, and thereby all the respondents/ claimants have sustained grievous injuries. According to the claimants, the driver of the appellant's Corporation bus was wholly responsible for the said accident and hence, the appellant, as owner of the vehicle, is liable to pay compensation. Therefore, the respondents/claimants have filed the above said claim petitions seeking compensation, as stated supra.

5. The Tribunal, after analysing the evidence on record, held that the claimants in M.C.O.P.Nos.217, 218 and 219 of 2009 are entitled to compensation of Rs.5,36,250/-, Rs.5,37,525/- and Rs.81,000/- respectively, together with interest at the rate of 7.5% per annum. Aggrieved by the award of compensation, the Transport Corporation has preferred these appeals.

6. The learned counsel appearing for the Transport Corporation would contend that the accident had happened only due to the rash and negligent act of the rider of the two wheeler and not due to any fault on the part of the driver of the Transport Corporation Bus. He would further contend that the driver of the Two wheeler did not possess a valid Driving Licence at the time of accident and he did not possess a Registration Certificate or Insurance Certificate for the two wheeler. Above all, at the time of accident, there were three persons travelling in the two wheeler, which itself is a policy violation. Further, the claimants themselves admitted that the vehicle was driven in a mud road, with the result, the driver of the two wheeler lost his balance. Thus, according to the



learned counsel for the appellant, the claimants have adequately contributed to the accident, while so, the transport corporation cannot be fastened with any liability to pay compensation. The counsel for the appellant also contends that the claimants have not produced any document in support of their age, avocation, the nature of the injuries and the period of treatment, while so, the Tribunal ought not to have awarded compensation to them and prays to allow the appeals.

7.Per contra, the learned counsel appearing for the respondents/claimants contended that the compensation awarded by the Tribunal under the head of disability is too meager, especially, in case of the respondent/claimant in MCOP.No.217 of 2009, who sustained fracture on his right leg, injuries over his right hand wrist and multiple injuries on his entire body, and also underwent surgery on his right leg. After surgery, his right leg was amputated below the knee. In the case of the claimant in M.C.O.P.No.218 of 2009, the claimant has suffered fracture on his right leg, knee, patella and the right leg knee patella was heavily damaged and it has been removed. The claimant in M.C.O.P.No.219 of 2009 has also sustained fracture over his right leg, knee patella and the right leg knee patella was heavily damaged due to the impact of the accident and, ultimately, it has been removed. Therefore, he would contend that the compensation awarded by Tribunal under other heads is meager and therefore, it should be enhanced taking note of the amputation of the right leg suffered by the claimants. He would further submit that the claimants in MCOP Nos.218, 219 of 2009 are Painters by profession and by reason of the amputation suffered by them, they have totally lost their earning capacity and, therefore, the learned counsel prayed for enhancing the compensation even in the absence of any cross objection filed by them.

8.Heard both sides and perused the documentary and oral evidence adduced before the Tribunal.

9.Before the Tribunal, on the side of the respondents/claimants, P.W.1 to P.W.4 were examined and Exs.P1 to P17 were marked. On behalf of the appellant/Transport Corporation, one Anil kumar/driver of the bus was examined as R.W.1, but no documents were marked.

10.C.M.A.No.1726 of 2011:-

The claimant-Raja was aged about 41 years. Due to the injuries sustained in the accident, he suffered amputation of right leg. Taking into consideration of the above, the Tribunal has come to the conclusion that the injury suffered by him is a functional disability. The Tribunal also considered the



disability assessed by the Doctor/PW2, coupled with Exs.P3, P5, P6, P9 and P10 and took the notional income of the claimant at Rs.3,000/-. Accordingly, the Tribunal taking the disability at 90%, awarded a sum of Rs.4,86,000/- towards partial permanent disability'.

10.1. On consideration of both oral and documentary evidence and also taking note of the manner of the accident, the Tribunal has rightly held that both the driver of the Transport Corporation Bus and the rider of the Bike have contributed to the accident and also apportionment of the degree of rash and negligence on the part of both the drivers of the respective vehicles fixed at 75%:25%.

10.2. On appreciation of evidence and also taking note of the fact that the driver of the two wheeler, who carried three persons along with him, has lost his balance and in the process, he is unable to drive the two wheeler even in the broad road and caused the accident, so the contribute negligence to the accident is fixed at 25% on him. Hence, the finding of the Tribunal fixing the contribute negligence on the driver of the Transport Corporation Bus at 75% and 25% on the driver of the two wheeler is well considered and the same does not warrant any interference at this appellate stage and the same is hereby confirmed.

10.3. The Tribunal also awarded Rs.2,000/- towards transportation and extra-nourishment respectively and a sum of Rs.75,000/- under the heads of Attender charge, Pain & suffering and Loss of Amenities and fixed the liability with the ratio of 25% to the owner of the bike and 75% of liability to the Transport Corporation, and in all awarded a sum of Rs.5,36,250/- as compensation.

10.4. In the decision of this Court reported in 2018 (1) TN MAC 592 (DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others], the Division Bench has held that though the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, the Court could take suo motu decision for enhancing the compensation amount awarded by the Tribunal, by re-appreciating the evidence on record and applying the correct position of law, as on date and by invoking Order 41, Rule 33 C.P.C. and Section 151 CPC as well as Article 227 of the Constitution of India. The relevant paragraph No.9 of the above said decision is extracted hereunder:-

"9.Though the Appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the Compensation awarded by the Tribunal from



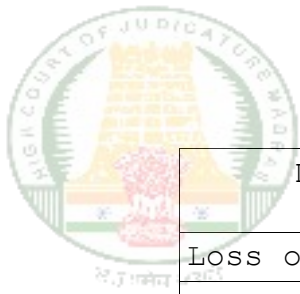
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Rs.14,57,000/- to Rs.17,83,600/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33, C.P.C., and Section 151 C.P.C., as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are beneficial in nature and what is required to be awarded is Just and Reasonable Compensation. Therefore, even in the absence of Appeal/Cross-Appeal by the Claimants, this Court has got power and jurisdiction to enhance the Compensation, which has been recognised by the Honourable Supreme Court in Nagappa v. Gurdayal Singh, 2004 (2) TN MAC 398 (SC)."

By relying upon the above decision, though this Appeal has also been preferred by the Transport Corporation, on considering the facts and circumstances of the case, this Court enables to enhance the compensation award amount towards loss of income to meet the ends of justice.

10.5. More particularly, considering the age, avocation of the claimant and his amputation on his right leg and the factum that he was admitted as an in-patient from 17.08.2008 to 02.10.2008 and had also taken further treatment for his amputation, in my considered view, the sum of Rs.3,000/- per month taken as loss of income by the Tribunal, Considering the date of accident, namely 17.08.2008, the said sum is too low. Furthermore, the Tribunal failed to award any amount towards future prospects, especially, when the claimant was only 41 years at the time of accident and suffered amputation in his right leg. The point for determination is whether the appellant/claimant has sustained injuries of such nature which had rendered in his functional disability. The criteria laid down by the Honourable Supreme Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC to award compensation by applying multiplier method is satisfied in this case. This Court feels it just and proper to calculate future prospects at the rate of 40%. Thus, this Court is of the considered view that the loss of income of the claimant can be fixed at Rs.6,80,400/- (Rs.4200 X 12 X 90 / 100 X 15), which will be fair and reasonable compensation and the amounts awarded under the other heads by the Tribunal are confirmed.

10.6. Accordingly, the award of the Tribunal is enhanced from a sum of Rs.7,15,000/- to a sum of Rs.9,09,400/- out of which 25% of the amount has to be deducted towards contributory negligence. After deduction, the balance 75% of the amount has to be awarded to the claimant/respondent in CMA.No.1726 of 2011. Thus, the break-up details of the enhanced and modified amounts are as follows:-



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Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income	Rs.4,86,000/-	Rs.6,80,400/-
Transportation charge	Rs.2,000/-	Rs.2,000/-
Extra-nutrition	Rs.2,000/-	Rs.2,000/-
Attendant charge	Rs.75,000/-	Rs.75,000/-
Pain & Suffering	Rs.75,000/-	Rs.75,000/-
Loss of Amenities	Rs.75,000/-	Rs.75,000/-
Total	Rs.7,15,000/-	Rs.9,09,400/-

11. C.M.A.No.1727 of 2011:-

The Tribunal, on analysis of oral and documentary evidence, had taken a sum of Rs.3,000/- per month as notional income of the claimant-Thanikachalam aged about 27 years. The claimant had suffered fracture of right leg, fracture of pattela, hip fracture and underwent three surgeries in his thigh. By reason of such surgeries, the claimant suffered shortening of leg by 5 cm. The Doctor assessed his disability at 65%. The Tribunal has come to the conclusion that the injury suffered by the claimant, rendered in his functional disability and accordingly, awarded a sum of Rs.4,21,000/- as permanent disability. The Tribunal also awarded compensation and other heads and arrived at a total sum of Rs.7,16,000/- and after deducting 25% towards contributory negligence, awarded a total sum of 5,37,525/-.

11.1. Admittedly, the claimant was aged 27 years at the time of accident. Due to the injuries, he underwent three surgeries and there was a shortening of his leg by 5 cm. The Doctor fixed the percentage of disability at 65%. Having regard to such injuries sustained by the claimant/respondent in CMA.No.1727 of 2011, he could not have attended duties for atleast 6 months.

11.2. In view of the same, the Tribunal ought to have fixed the notional income of the claimant atleast at Rs.4,200/- taking note of the date of accident on 17.08.2008 and the age of the claimant, More particularly by awarding some amount towards future prospects to the claimant, which was not awarded. The criteria laid down by the Honourable Supreme Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC to award compensation by applying multiplier method is satisfied, as stated supra. This Court is of the considered view that 40% should be added towards his future prospects and accordingly, the loss of income is arrived at Rs.5,89,680/- (Rs.4200 X 12 X 65 / 100 X 18).



11.3. The Tribunal awarded Rs.52,000/- towards medical expenses based on medical records and the other amounts awarded by the Tribunal towards Transportation, Extra Nutrition, Attendant Charge, Pain and Suffering and Loss of Future Life, in the opinion of this Court, does not require any interference.

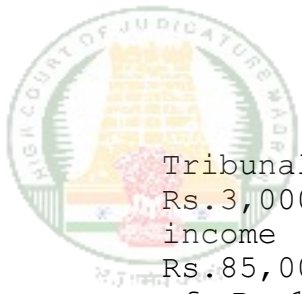
11.4. In the decision of this Court reported in 2018 (1) TN MAC 592 (DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others], the Division Bench has held that though the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, the Court could take suo motu decision for enhancing the compensation amount awarded by the Tribunal, by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33 C.P.C. and Section 151 CPC as well as Article 227 of the Constitution of India. The relevant paragraph no.9 is extracted supra.

11.5. However, the award of the Tribunal is enhanced from a sum of Rs.7,16,000/- to a sum of Rs.8,83,180/- out of which 25% of the amount has to be deducted towards contributory negligence. After deduction, the balance 75% of the amount has to be awarded to the claimant/respondent in CMA.No.1727 of 2011. The amounts awarded under other heads award amount awarded by the Tribunal are hereby confirmed. Break-up details are as tabulated below:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income	Rs.4,21,000/-	Rs.5,89,680/-
Medical expenses	Rs.52,000/-	Rs.52,000/-
Extra-nourishment	Rs.16,500/-	Rs.16,500/-
Attendant charge	Rs.75,000/-	Rs.75,000/-
Pain & Suffering	Rs.75,000/-	Rs.75,000/-
Loss of Amenities	Rs.75,000/-	Rs.75,000/-
Total	Rs.7,16,000/-	Rs.8,83,180/-

12. C.M.A.No.1728 of 2011:-

The claimant-Saridha was aged about 21 years at the time of accident and she has suffered fracture of right hand shoulder, fracture of left jaw and crush injuries. The Tribunal has come to the conclusion that the injury suffered by the claimant rendered in her functional disability based on the deposition of P.W.2/Doctor coupled with Exhibits P3, P5,P6, P9 and P10. The



Tribunal had taken the notional income of the claimant at Rs.3,000/- per month and awarded Rs.12,000/- towards loss of income during the period of treatment. That apart, a sum of Rs.85,000/- was awarded towards disability. Thus, a total sum of Rs.1,08,000/- was awarded, out of which 25% was deducted towards contributory negligence to arrive at Rs.81,000/-. Having regard to such injuries sustained by the claimant/respondent in CMA.No.1728 of 2011, she could not have attended duties for at least 4 months and therefore, the Tribunal is right in awarding Rs.12,000/- towards loss of income during the period of treatment. As far as the amount awarded towards other heads is concerned, this Court is of the view that they are fair and reasonable and it warrants no interference. Hence, the Civil Miscellaneous Appeal is liable to be dismissed.

13.In the result,

(i) The Civil Miscellaneous Appeal Nos.1726 & 1727 of 2011 are partly allowed and the Civil Miscellaneous Appeal No.1728 of 2011 is dismissed.

(ii) It is made clear that the respondent/claimant in CMA.Nos.1726 of 2011 is entitled to the enhanced compensation amount from Rs.7,15,000/- to Rs.9,09,400/- along with interest at the rate of 7.5% per annum and the ratio of the apportionment will be fixed as per the ratio fixed before the Tribunal.

(iii) The respondents/claimants in CMA.Nos.1727 of 2011 is entitled to the enhanced compensation amount from Rs.7,16,000/- to Rs.8,83,180/- along with interest at the rate of 7.5% per annum and the ratio of the apportionment will be fixed as per the ratio fixed before the Tribunal.

(iv) The respondent/Karnataka Transport Corporation is directed to deposit the entire enhanced compensation (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition and till the date of deposit, within a period of twelve weeks from the date of receipt of a copy of this Judgment.

(v) On such deposit being made, the respondents/claimants in CMA.Nos.1726 & 1727 of 2011 are permitted to withdraw the entire amount after following the due process of law. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

klt



To

1. The Motor Accidents Claims Tribunal,
(Principal Subordinate Judge), Thiruvannamalai

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

+3 ccs to Mr.B.Jawahar, Advocate, S.R.No.52002 to 52004

C.M.A.Nos.1726 to 1728 of 2011
and
M.P.Nos.1 of of 2011 (3 cases)

VG-II (CO)
SSM(11/10/2019) .