

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3257 & 3271 of 2019
and
C.M.P.No.18702 of 2019

C.M.A.Nos.3257 of 2019

The Managing Director,
T.N.S.T.C. (VPM) Ltd.,
3/137, Salamedu, Vazhuthareddy (Post),
Villupuram Taluk, Villupuram. ... Appellant/Petitioner
Vs

Bharanidharan,
S/o.Murugan,
No.36/F, North Street,
Anuppanady, Madurai 625 009. ... Respondent/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment
and Decree dated 05.04.2018 made in M.C.O.P.No.7526 of 2016 on
the file of the Motor Accident Claims Tribunal, The Special Sub
Court No.1, Small Causes Court, Chennai.

For Appellant :Mr.K.J.Sivakumar

For Respondent :Ms.P.T.Saleem Fathima

C.M.A.No.3271 of 2019

Bharanidharan,
S/o.Murugan,
No.36/F, North Street,
Anuppanady, Madurai. ... Appellant/Petitioner
Vs

The Managing Director,
TNSTC (VPM) Ltd.,
3/137, Salkamedu, Vazhuthareddy (Post),
Villupuram Taluk,
Villupuram 605 401. ... Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed against the award and decree of the Motor Accident Claims Tribunal (Special Sub Judge - I, Chennai) made in MCOP.No.7526/2016 dated 05.04.2016.

For Appellant :Ms.P.T.Saleem Fathima

For Respondent :Mr.K.J.Sivakumar

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

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeals have been preferred by the claimant as well as by the Transport Corporation aggrieved over the quantum of compensation of Rs.39,27,200/- granted by the Tribunal to the claimant. The victim was a 4th year B.Tech., (Mechanical) student studying at Dr.M.G.R.Engineering College, Chennai, at the time of accident. He sustained injuries leading to amputation of right leg above knee in the accident occurred on 05.10.2016, when he was travelling as a pillion rider in the motorcycle, wearing helmet, proceeding from North to South direction at Tambaram service road, Maduravoyal over bridge, Chennai and was hit down by the transport corporation bus from behind, which was driven rashly and negligently.

2.The claim petition was contested by the transport corporation. However, the Tribunal held that the bus driver was rash and negligent and fixed the negligence on the part of the driver of the transport corporation and awarded a sum of Rs.39,27,200/- which is being questioned by the claimant as inadequate and by transport corporation as excessive.

3.Heard, Ms.P.T.Saleem Fathima, learned counsel appearing for the claimant and Mr.K.J.Sivakumar, learned counsel appearing for the Transport Corporation.

4.Mr.K.J.Sivakumar, learned counsel appearing for the transport corporation would strenuously argue that the accident occurred because of the rash and negligent driving of the two wheeler and he would also submit that Rs.15,000/- was fixed by the Tribunal as notional income without any evidence adduced by the claimant. However, Ms.P.T.Saleem Fathima, learned counsel appearing for the claimant would submit that a categorical finding has been given by the Tribunal that the driver of the transport corporation bus alone was negligent. Moreover, for a 4th year B.Tech., student fixation of Rs.15,000/- as monthly income is on the lower side and this Court has already fixed a sum of Rs.20,000/- in a similar case in Balamanothari and another Vs. Sri Venkateswara College of Engineering and others reported in 2018 (2) TN MAC 81. Therefore, she seeks for enhancement.

5. Heard the learned counsel appearing on both sides and perused the records carefully.

6. It is evident that the accident occurred on 05.10.2016 at 21.45 hrs, when the victim was travelling as pillion rider in a motorcycle, wearing helmet. PW1 in his evidence categorically deposed that the accident occurred because of the rash and negligent driving of the bus which hit the motorcycle from behind which was proceeding ahead of the bus. Ex.P.1/FIR has also been filed against the driver of the transport corporation. Though the driver of the bus was examined as RW1, it is evident that the accident occurred because of the rash and negligence of the driver of the bus. Moreover, the complaint was given by an eyewitness to the accident which has been marked as Ex.P.1. The complaint was given by one third party. There is no occasion for the third party to take either the side of the claimant or the transport corporation and therefore, the finding regarding the negligence as arrived by the Tribunal that the driver of the bus alone is responsible for the accident stands confirmed.

7. It is proved by the evidence of PW1 as well as through Ex.P.6/Degree certificate, that the claimant was studying 4th year B.Tech., at the time of the accident. Ex.P.3/discharge summary issued by Apollo Hospital and Ex.P.4/discharge summary issued by Meenakshi Mission Hospital would prove that the claimant sustained serious injuries. The claimant was admitted as inpatient from 05.10.2016 to 26.10.2016 in Apollo Hospital and from 27.10.2016 to 01.12.2016 in Meenakshi Mission Hospital. As many as 10 surgeries were done on the victim. PW2 who is the Executive (Medical records) from Meenakshi Mission Hospital adduced evidence that the claimant was admitted in the hospital and he took treatment.

8. PW3/Doctor categorically stated that the claimant sustained 60% permanent disability and 35% partial permanent disability in the left leg and the disability certificate issued by PW3 has been marked as Ex.P.14. The right leg of the claimant was amputated above knee. The photograph produced by this Court would also demonstrate serious nature of injury caused to the claimant. Even as per the Employees Compensation Act also, for amputation of leg above knee 60% disability has to be determined which was rightly determined by the Tribunal and therefore, the said determination cannot be disturbed. Since, the claimant is the 4th year B.Tech., (Mechanical Engineer) student from Dr.M.G.R. Engineering College, Rs.15,000/- fixed by the Tribunal is not appropriate. Even though Mr.K.J.Sivakumar, learned counsel appearing for the transport corporation could find fault with the Tribunal for having fixed the notional income at Rs.15,000/- per month, this Court in a similar case

for an Engineering student determined the notional income at Rs.20,000/- per month in BalamanoHari and another Vs. Sri Venkateswara College of Engineering and others reported in 2018 (2) TNMAC 81. It is also proved that the claimant is a bright student and therefore, a sum of Rs.20,000/- is determined as monthly income.

9.The age of the claimant is 22 years as proved by Ex.P.7/Aadhaar card and therefore, 40% has to be added towards future prospects. If 40% is added towards futures prospects, the notional income comes to Rs.28,000/- per month [Rs.20,000/- (+) Rs.8,000/-]. As per the judgment of the Hon'ble Supreme Court delivered in Sarla Verma's case, the right multiplier is "18" and therefore, the loss of earning capacity would be at Rs.36,28,800/- [(Rs.28,000/- x 12 x 18) x 60%].

10.Pain and sufferings:

Because of the crush injury in the right lower limb with vascular injury, left femur segmental diaphyseal fracture of femur, left thigh severe degloving injury, the claimant was admitted as inpatient for 58 days and 10 surgeries have been done on him and therefore, Rs.1,00,000/- awarded by the Tribunal towards pain and suffering is negligible. Hence, a sum of Rs.2,00,000/- is awarded under this head.

11.Transportation:

The Tribunal has awarded a sum of Rs.10,000/- under this head, which is very low as the claimant was admitted in the hospital and 10 surgeries have been done and he has to go for further treatment. Therefore, a sum of Rs.50,000/- is awarded under this head.

12.Medical expenses:

The Tribunal has awarded a sum of Rs.17,28,681/- as per Ex.P.5 and Ex.11/Medical records and based on evidence of PW2, under this head. Therefore, the same is confirmed.

13.Extra nourishment:

The Tribunal has awarded a sum of Rs.30,000/- which is low and therefore, a sum of Rs.50,000/- is awarded under this head.

14.Attendant charges:

The Tribunal has awarded a sum of Rs.14,500/- under this head which is on the lower side as the claimant was admitted in the hospital for 58 days. Therefore, a sum of Rs.50,000/- is awarded.

15.Loss of future prospects & disfigurement:

The Tribunal has awarded a sum of Rs.1,00,000/- under

this head. The same is confirmed.

16.Loss of marital prospects and bliss:

No amount was awarded under this head. As the photographs would show that the claimant sustained serious injuries leading to amputation of right leg and crush injury also found in the left leg. Even when a normal bridegroom is unable to get a suitable bride, nowadays, a person with amputated leg, in all probabilities, may not get a bride. To put it in other words, the marital prospects of the claimant are bleak. If a person chooses to be a bachelor throughout his life, it is his wish, whereas if a person is compelled to remain so, because of an unfortunate accident, then definitely it will lead to lot of pain, mental pressure, agony throughout his life and therefore, a sum of Rs.2,00,000/- is awarded under this head.

17.Loss of amenities:

Even though the Tribunal has not awarded any amount under this head, this court awards a sum of Rs.1,00,000/- under this head.

Head	Amount (Rs.)
Loss of earning capacity	3628800
Pain and sufferings	200000
Transportation	50000
Medical expenses	1728681
Extra nourishment	50000
Attendant charges	50000
Loss of future prospects & disfigurement	100000
Loss of marital prospects & bliss	200000
Loss of amenities	100000
Total	6107481

18.Hence, the total compensation payable in this case is Rs.61,07,481/- rounded off to Rs.61,00,000/-, along with interest at the rate of 7.5% per annum.

19.The claimant is directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimant and thereafter, transfer the remaining award amount as per the award passed by this Court to the claimant's account.

20.The Transport Corporation is directed to deposit the entire award amount along with interest and costs as per the modified award passed by this Court, within a period of twelve weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any, failing which, the Chairman-cum-Managing Director as well as Financial Advisor-cum-Chief Accounts Officer of the Transport Corporation shall appear before this Court on 25.11.2019.

21.On such deposit being made, the Tribunal is directed to transfer a sum of Rs.35,00,000/- to the personal bank account of the claimant through RTGS within a period of one week thereon and the balance amount with interest and costs shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till his life time. The claimant is permitted to withdraw interest accruing on such deposit once in a month.

22.Accordingly, C.M.A.No.3257 of 2019 is dismissed and C.M.A.No.3271 of 2019 is partly allowed, enhancing the compensation amount from Rs.39,27,200/- to Rs.61,00,000/- with interest. No costs. Consequently, connected Miscellaneous Petition is closed.

23.For reporting compliance, call the matter on 25.11.2019.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

sai

To

1. The Sub Judge,
Special Sub Court No.1 to deal with MCOP Cases,
Court of Small Causes,
Chennai 104.
2. The Section Officer,
VR Section, High Court, Madras.
3. The Section Officer,
Judicial Section,
High Court, Madras
(For Posting under the Caption of Reporting Compliance)

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.74900

+1cc to Ms.P.T.Saleem Fathima, Advocate SR.No.75199

C.M.A.Nos.3257 & 3271 of 2019

SR(CO)
GMY(30/10/2019)



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