



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.11.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.2135 of 2015
& M.P.No.1 of 2015
and Cros. Obj.No.102 of 2015

CMA.No.2135 of 2015 :

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram Division-I Ltd.,
No.3/137, Salamedu
Vazhutha Reddy,
Villupuram District. .. Appellant / Respondent
Respondent

/versus/

Rayar
S/o.Kottapuli .. Respondent/ Petitioner

Cros.Obj.No.102 of 2015 :

Rayar
S/o.Kottapuli .. Cross Appellant

/versus/

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram Division-I Ltd.,
No.3/137, Salamedu
Vazhutha Reddy, Villupuram District. .. Respondent

Prayer in CMA.No.483 of 2016 : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 01.08.2014 made in M.C.O.P.No.525 of 2010 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.II to deal with MCOP cases) Chennai.

Prayer in Cros.Obj.No.102 of 2015 : Cross Objection filed under Order 41 Rule 22 of CPC, praying to enhance the award amount passed vide judgment and decree dated 01.08.2014 in MCOP.No.525/2010 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II to deal with MCOP Cases, Chennai.



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In CMA.No.2135 of 2015 :

For Appellant : Mr.C.S.K.Sathish
For Respondents : Ms.A.Subadra
for Mr.F.Terry Chellaraja

In Cros.Obj.No.102 of 2015 :

For Cross Appellant : Ms.A.Subadra
for Mr.F.Terry Chellaraja
For Respondent : Mr.C.S.K.Sathish

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

(The case has been heard through Video Conferencing)

The appeal is preferred by the Transport Corporation challenging the quantum of compensation awarded to the victim, whereas the victim has preferred a cross objection seeking enhancement of compensation.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. The facts of the case is that on 07.06.2006 at about 1645 hrs., when the claimant was travelling as a pillion rider in a motor cycle bearing Registration No.PY-01-AD-2206 from Panrutti to Thirukovilur Road, near Thiruvamur Mallattaru Bridge, the driver of a bus bearing Registration No.TN-23-N-1412 owned by the State Transport Corporation, came in a rash and negligent manner, hit the two wheeler and caused the accident. Owing to which, the claimant sustained fracture injury on his right leg, right knee and hip.

4. The claimant was aged 30 years at the time of accident and he was working as an employee in a Brick Chambers, earning Rs.500/- per day, and due to the injuries he sustained, he has lost his income and also spent money for treatment. Hence, he laid a claim petition for Rs.6,00,000/- before the Motor Accident Claims Tribunal, Chennai.

5. The Tribunal on considering the nature of injury and evidence, awarded Rs.3,15,000/- as compensation.

6. The said award is challenged by the Transport Corporation on the ground that the Tribunal has fixed the disability at the rate of 40% when the injury was only a "compound comminuted



fracture patella right leg; and fracture of both bones U/3 right leg". It is contended by the learned counsel for the Transport Corporation that fixation of Rs.3,000/- for per percentage of disability, for the accident that had occurred on 07.6.2006, is on the higher side. He also contented that apart from awarding compensation for the disability, the Tribunal has awarded a further sum of Rs.50,000/- for loss of future prospects without any basis. He also added that the Tribunal having awarded compensation for the disability, and Rs.40,000/- towards loss of income for six months, there is no necessity to pay an additional sum of Rs.50,000/- under the caption for "loss of future prospects". This amounts to duplication of compensation. Hence, the award of the Tribunal warrants interference.

7. Per contra, the learned counsel for the claimant would argue that the injury sustained by the claimant has caused permanent disability to his earning capacity. Hence, the Tribunal ought to have applied the multiplier method in determining the loss due to the functional disability caused to the claimant, instead, it awarded a sum of Rs.1,20,000/- towards disability and Rs.50,000/- towards loss of future prospects. The assessment of disability at 40% is also less and it is contrary to the evidence given by P.W.2, the doctor. Therefore, seeking enhancement of the compensation, the claimant has filed the cross objection.

8. Heard the learned counsel on either side and perused the records.

9.1 In the accident that had occurred on 07.06.2006, the claimant sustained fracture on his right patella and suffered knee joint fibroid, as a result, movement and flexibility of his right leg is restricted. P.W2, the doctor who has assessed the disability of the claimant is not an orthopaedic surgeon. He had issued the disability certificate [Ext.P5] after 7 years from the date of accident. Therefore, the Tribunal has rightly fixed the disability as 40%, though the disability certificate [Ext.P5] given by P.W.2 has assessed the disability at 70%. In the year 2006, the compensation for each percentage of disability was less than Rs.2000/-, however, the Tribunal has fixed Rs.3,000/- per percentage of disability and also awarded Rs.50,000/- for loss of future prospects. Though the learned counsel for the claimant would submit that the injury has caused functional disability, and that the Tribunal ought to have applied a multiplier method, the perusal of material records would indicate that the injuries sustained by the claimant are not Scheduled Injuries and it does not take away the earning capacity of the claimant. Hence, it is not a fit case to apply the multiplier. The Tribunal has also taken note of the impact of the injury in the life of the claimant and has awarded a sum of Rs.3,15,000/- with interest.



9.2 Taking note of the fact that the injured was treated at Government Hospital for 33 days as in-patient and no compensation was awarded for the medical expenses and this may warrant interference, however, this Court is of the opinion that the distribution of compensation under some of the heads though may appear to be on the higher side individually, however, on a cumulative assessment of injury vis-a-vis, the avocation of the claimant and the number of days confined in bed, this Court finds that there is no necessity to interfere with the award passed by the Tribunal.

10. As a result, both the Civil Miscellaneous Appeal and the Cross Objection are dismissed, and the award of the Tribunal in M.C.O.P.No.525 of 2010 stands confirmed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

11. The appellant/Transport Corporation is directed to deposit the award amount with interest, less the amount already deposited, if any, within a period of six weeks from the date of the receipt of this order copy. On deposit, the claimant is permitted to withdraw the amount, on filing appropriate application before the Tribunal.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

1.The Judge,
Special Sub Court No.II to deal with MCOP cases
Motor Accident Claims Tribunal,
Chennai.

Copy to:
The Section Officer
VR Section
High Court, Madras.

+1cc to M/s.M.Malar, Advocate SR.No. 37213

C.M.A.No.2135 of 2015

CNR CO
A.SK(21.09.2021)