IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED: 13.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.Nos.1441 of 2018 and 478 of 2020

Shaji Thomas ... Appellant / Claimant (in CMA.1441/2018)

... Respondent /Claimant (in CMA.478/2020)

versus

The Managing Director,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
No.3/137, Salamedu,
Vazhuthareddy Post,
Villupuram - 605 401. ... Respondent/Respondent in CMA.1441/2018

... Appellant/Petitioner CMA.478/2020

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.10.2017 made in M.C.O.P.No.1044 of 2013 on the file of the Motor Accidents Claims Tribunal [IV Court of Small Causes], Chennai.

Mr.K.Varadha Kamaraj
For appellant (in CMA.1441/2018)
and for respondent (in CMA.478/2020)

Mr.K.J.Sivakumar
for respondent (in CMA.1441/2018)
and for appellant (in CMA.478/2020)

COMMON JUDGMENT
[Judgment of the Court was delivered by R.PONGIAPPAN, J.]

Aggrieved over the common award passed by the Motor Accidents Claims Tribunal [IV Court of Small Causes], Chennai in M.C.O.P.No.1044 of 2013, Tamil Nadu State Transport Corporation

(Villupuram) Ltd., who is the respondent in the above said M.C.O.P. has preferred C.M.A.No.478 of 2020 to set aside the award passed by the Claims Tribunal. Similarly, the claimant in the above said M.C.O.P. has preferred C.M.A.No.1441 of 2018 and seeking the relief to enhance the compensation awarded by the Claims Tribunal.

2. Before the Claims Tribunal, the above referred M.C.O.P. has been tried along with M.C.O.P.Nos.883, 992 and 1017 of 2013. However, since both the appeals have been preferred against a common judgment, we have also decided to pass a common judgment in these two appeals.

3. For the sake of convenience hereinafter the parties are referred to, as per their litigative status before the Tribunal.

4. The averments made in the Claim Petition filed by the claimant before the Tribunal is as follows:-

4.1. On 23.12.2012 at about 04.50 hours, while the claimant was travelling in a Car bearing Registration No.TN-05-B-6941 driven by one T.Venkatesan, at G.S.T. Road, near Santhi Petrol Bunk Signal, Pazhavanthangal, Chennai, the driver of the Car stopped the Car and waiting for the signal, at that time, the Bus bearing Registration No.TN-32-N-2347 driven by its driver, owned by the respondent came in a rash and negligent manner in the same direction and hit behind the Car, due to which, the claimant, who was travelling in the Car sustained the grievous injuries. The accident had occurred only due to the rash and negligent driving of the above said bus driver, the respondent being the owner of the said Bus, is vicariously and statutorily liable to pay compensation to the claimant.

4.2. For the said accident, a case has been registered in Crime No.1685 of 2012 by the Inspector of Police, Mount Traffic Investigation, Pallavaram, Chennai. Before the accident, the claimant was working as a Computer Programmer in Abudhabi Grammer School, Abudhabi, U.A.E. and earned around 8,000/- Dirhams per month. Due to the accident, the claimant has lost one eye and sustained 4 fractures in various parts of the body. Hence, for the injury sustained by the claimant, he has filed a Claim Petition in M.C.O.P.No.1044 of 2013 and claiming a compensation of Rs.40,00,000/-.

4.3. Opposing the claim made by the claimant, by filing counter, the respondent/Transport Corporation submitted that the allegations contained in the petition are all false one. The age, avocation and monthly income of the injured are denied. The nature of injury alleged to have been sustained by the claimant has also been disputed on the side of the respondent. The respondent has stated that the vehicle bearing Registration No.TN-32-N-2342 was not involved in the accident. Further, he submitted that the respondent's vehicle was operated in Town Bus route as Route No.3/A from Vellore to Senganatham and from Vellore to Virinjipuram within the Vellore District jurisdiction. As mentioned in the First Information Report, they have not operated the vehicle from Kallakurichi to Chennai and hence, the respondent is not liable to pay any compensation to the claimant. The claim of the claimant is exorbitant and thus, the respondent sought for dismissal of the Claim Petition.

4.4. Before the Claims Tribunal, the claimant examined himself as P.W.4. Further, two Doctors, who had issued Disability Certificates to the claimant [injured] were examined as P.W.5 and P.W.6. The copy of the First Information Report, Discharge Summary, Medical Bills, prescription for OP, X-ray for OP, Disability Certificate (two in numbers), Employment Letter issued by the employer and Bank Statement were marked on the side of the claimant as Exs.P.1, P.9, P.10, P.11, 18, 19, 21, 22 and 23 respectively. On the other hand, on the side of the respondent, none have been examined as a witness and no documents were exhibited.

4.5. Having considered all the materials placed before him, the learned Presiding Officer, Claims Tribunal came to the conclusion that the alleged accident had happened only due to the rash and negligent act of the driver of the Bus and awarded compensation of Rs.8,27,900/- with interest at the rate of 7.5% per annum, further, ordered to pay the same by the respondent. Challenging the same, as the said compensation is excessive one and also for enhancing the same, both the claimant [injured] and the respondent [Transport Corporation] are filed these two Civil Miscellaneous Appeals vice versa.

5. Heard the learned counsel appearing for the appellant [injured] and the learned counsel appearing for the respondent [Transport Corporation].

6. In respect to the aspect of negligence and liability, the learned counsel appearing on behalf of the respondent has not disputed the findings arrived at by the Claims Tribunal. According to him, the quantum of compensation awarded by the Claims Tribunal is excessive one.

7. On the other hand, according to the submission made by the learned counsel appearing on behalf of the appellant [injured], the award passed by the Claims Tribunal is not in accordance with the principles set out in various judgments.

8. Considering the rival submission made by the respective counsel, first of all, in respect to the monthly

income received by the injured, he has stated before the Claims Tribunal as he was working as a Computer Programmer in Abudhabi Grammer School, Abudhabi, U.A.E. and earned around 8,000/- Dirhams per month. In order to substantiate the same, the claimant has exhibited the employment letter issued by the employer as Ex.P.22, further he exhibited the Bank Statement which relates to the receipt of salary as Ex.P.23. The contents of those documents reveals the fact that before the accident, the claimant was employed at Abudhabi and received the salary around 8,000/- Dirhams per month. In this regard, while at the time of disposing M.C.O.P., the Claims Tribunal erroneously without appreciating the entries made in the Bank Statement took the income of the injured as Rs.10,000/- and calculated the compensation.

9. The learned counsel for the claimant further submitted that at the time of accident, the value of the Dirhams is Rs.177/- hence without calculating the correct value which is equivalent to Rupee, the Claims Tribunal awarded meagre compensation, which needs interference by this Court.

10. Now on considering the said submission by going through the relevant records, it is true before the accident, the claimant was appointed as a Teacher and working as a Computer Programmer in Abudhabi Grammer School, Abudhabi, U.A.E. Though the documents exhibited on the side of the claimant proves the fact that he was employed at Abudhabi and was receiving the salary in Dirhams, that alone is not sufficient to determine the correct value in Rupee, which is equivalent one in India. Further, without seeing the Passport, it is impossible to hold that the claimant is a permanent employee in Abudhabi. However, on considering the fact that the accident had happened in the year 2012 and he also working as a Teacher, we are of the considered opinion that Rs.20,000/- is the appropriate monthly income, to be taken into account for calculating the loss of future earnings.

11. As per the evidence given by the Doctors, as P.W.5, P.W.6 and as per the Disability Certificates exhibited as Ex.P.19 and Ex.P.21, the claimant has lost one eye in the accident. Further, the claimant has sustained the following injuries:-

"(i) fracture of left zygoma maxilla arch, left orbit and maxillary sinus walls,
(ii) Left TMJ subluxation
(iii) Rupture globe left eye with extraoral intraocular contents
(iv) Blow out fracture of left orbit
(v) Displaced fracture of left ribs 5, 9
(vi) Right, Left lung contusion
(vii) Bilateral Haemothorax"

12. For the injuries sustained by the claimant, the Doctors, who had examined on the side of the claimant issued Disability Certificates saying that the claimant has sustained 40% permanent disability, in view of the fact that he has lost one eye permanently. For the remaining injuries [fractures], the Doctors, who issued Disability Certificates gave evidence as the claimant has sustained 60% partial and permanent disability.

13. Hence, on considering the entire circumstances, we are of the considered opinion that due to the loss of one eye, since the claimant being a teacher, it is very difficult to continue the said employment furthermore after the accident. Therefore, the loss of one eye is nothing but Functional Disability, for which, the loss of future earnings has to be calculated by adopting the multiplier method.

14. As already observed, since the claimant was employed in a private organisation and the age of the claimant is 46 years at the time of accident, future prospectus has to be added along with monthly income for calculating the loss of future earnings. As per the judgment of our Honourable Apex Court in NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, considering the age, avocation of the injured, 25% of the monthly income has to be added for calculating the monthly income. In this way, after adding 25% of the monthly income, the total monthly income of the claimant would be at Rs.25,000/- [Rs.20,000/- + 25%]. Secondly, it is appropriate that for the loss of one eye, 30% disability has to be taken into account for calculating the loss of future earnings on account of permanent disability.

15. In respect to the multiplier, as already stated since the age of the claimant is 46 years and on going through the judgment of our Honourable Apex Court in SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121, the appropriate multiplier for calculating the loss of future earnings is 13. Accordingly, the loss of future earnings on account of permanent disability (i.e.) to the loss of eye is calculated as Rs.11,70,000/- [Rs.25,000 x 12 x 13 x 30%].

16. In respect to the compensation for Partial and Permanent Disability, though the evidence given by the Doctors is that the claimant sustained 60% Partial and Permanent Disability, the Claims Tribunal while at the time of disposing the M.C.O.P. calculated the percentage of Partial and Permanent Disability as 40%, in fact for reducing the percentage of disability, the Claims Tribunal has not mentioned any specific reason. However, considering the fact that the claimant has sustained two fractures, we are of the opinion that fixation of 50% of Partial and Permanent Disability is the appropriate one

for calculating the compensation. Since the accident had occurred in the year 2012, we are further decided that Rs.2,500/- per percentage has to be awarded for the injury sustained by the claimant. Accordingly, Rs.1,25,000/- is awarded under the head for Partial and Permanent Disability.

17. In respect to other amounts awarded by the Claims Tribunal under various heads, both the learned counsel for the appellant [injured] and the learned counsel for the respondent [Transport Corporation] conceded that the amount determined by the Claims Tribunal in respect to other heads are proper and need not be altered. Accordingly, the modified compensation payable to the appellant [injured/Shaji Thomas] is as under:-

Head	Awarded by the Claims Tribunal (Rs.)	Enhanced Compensation (Rs.)
Loss of Future Earnings on account of permanent disability [20,000 x 12 x 13 x 30%]	3,12,312.00	11,70,000.00
Partial and Permanent Disability	1,20,000.00	1,25,000.00
Pain and Sufferings	40,000.00	40,000.00
Extra Nourishment	10,000.00	10,000.00
Transport to Hospital	10,000.00	10,000.00
Damage to Clothes	1,000.00	1,000.00
Attender Charges	2,400.00	2,400.00
Medical Expenses	2,79,100.00	2,79,100.00
Future Medical Expenses	15,000.00	15,000.00
Loss of Income during the time of treatment	23,100.00	23,100.00
Loss of Amenities	15,000.00	15,000.00
Total	8,27,900.00	16,90,600.00

18. Hence, the compensation arrived at by the Claims Tribunal is enhanced to the extent of Rs.16,90,600/-. The interest awarded by the Claims Tribunal at the rate of 7.5% per annum remains unaltered. The respondent / Transport Corporation is directed to deposit the entire award amount along with interest and costs as per the modified award passed by this Court before the Tribunal, after deducting the amount already deposited, within a period of four weeks from the date of

receipt of a copy of this judgment. On such deposit being made, after collecting the Court fee for the enhanced compensation, the Tribunal is directed to transfer the said amount to the Bank account of the appellant[injured/Shaji Thomas] through RTGS./NIFT within a period of one week.

19. In the result, C.M.A.No.1441 of 2018 filed by the appellant [injured/Shaji Thomas] is partly allowed and C.M.A.No.478 of 2020 filed by the respondent [Transport Corporation] is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

The Motor Accidents Claims Tribunal
[IV Court of Small Causes], Chennai.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No. 22470

C.M.A.Nos.1441 of 2018
and 478 of 2020

VD(CO)
GN(11/01/2021)