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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.160 of 2017
and
Cross Objection No.49 of 2019
and
C.M.P.No.1037 of 2017

C.M.A.No.160 of 2017:

The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division - I) Ltd.,
Chennimalai Road, Erode. .. Appellant/2nd Respondent

Vs.

1.P.Nagaraj ...1st Respondent/Petitioner
2.Shankar @ Ramu ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 31.03.2016 made in M.C.O.P.No.1172 of 2010 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Tiruppur.

For Appellant : Mr.Varunkumar Manonidhi
for Mr.K.J.Sivakumar

For R1 : Mr.Ma.P.Thangavel
Cross Objection No.49 of 2019:

P.Nagaraj ... Cross Objector/ Petitioner
Vs.

1.Shankar @ Ramu

2.The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division - I) Ltd.,
Chennimalai Road, Erode. ... Respondents/ Respondents

Prayer: This Cross Appeal is filed under Order XXXXI Rule 22 of C.P.C against the Award and decree dated 31.03.2016 made in M.C.O.P.No.1172 of 2010 on the file of the Motor Accidents Claims Tribunal / Additional Subordinate Court, Tiruppur.



For Cross Appellant : Mr.Ma.P.Thangavel
For R1 : Mr.Varunkumar Manonidhi
For Mr.K.J.Sivakumar

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

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Heard both the learned counsels.

2. The appeal has been filed by the 2nd respondent in M.C.O.P.No.1172/2010 which was on the file of the Motor Accidents Claims Tribunal / Additional Sub Court, Tiruppur, questioning the grant of award dated 31.03.2016 to the 1st respondent herein viz., P.Nagaraj.

3. For good measure, the claimant in M.C.O.P.No.1172 of 2010 had also filed Cross Objection No.49 of 2019.

4. Heard arguments advanced by Mr.Varunkumar Manonidhi, learned counsel representing Mr.K.J.Sivakumar, learned counsel for the appellant in C.M.A No.160 of 2017 and Mr.Ma.P.Thangavel, learned counsel for the cross objector in Cross Objection No.49 of 2019.

5. It is the contention of Mr.Varunkumar Manonidhi, learned counsel for the appellant that the accident itself is disputed by the appellant herein and to substantiate that, the appellant had filed a trip sheet showing that the bus which was said to have been involved in the accident, was plying in some other area about 40 Kms. away. To further substantiate this particular fact, they had also examined the conductor of the bus. But it is his grievance that the Tribunal had brushed away such evidence.

6. Now, entering into the facts of the case, the claimant, had filed M.C.O.P. No.1172 of 2010 claiming that when he was driving a motor-cycle bearing Registration No.TN 39 AK 6451 from Tiruppur to Darapuram, a Government bus bearing Registration No.TN 33 N 1717 had collided with the motor-cycle and this had caused him injuries which are given below:

(1) Degloving injury envols the right thigh (whole of right thigh) and left popliteal fossa 15 X 10 cm.

(2) Degloving injury envols the pennis and Scrutum with exposed testis and skin loss.

Wound 1 and 2 are grievous.

7. It is claimed by Mr.Ma.P.Thangavel, learned counsel for the Cross Objector that the claim before the Tribunal was that the claimant was hospitalized for 36 days as in-patient. It was stated that there was loss of income. It must also be mentioned that he was working as a Power Table Supervisor at Tiruppur.



8. It is the contention of the learned counsel for the claimant that though documents have not been produced to show that a reasonable determination of income would be at Rs.7,000/- per month, the Tribunal had determined it as Rs.3,000/- per month. The grievance of the learned counsel for the claimant, was that there should be upward revision in the award granted by the Tribunal.

9. In so far as the contention of the learned counsel for the appellant in C.M.A.No.160 of 2017 is concerned, I would necessarily have reject that contention owing to the fact that the first document, which relates to the accident is Ex.P3/Accident Register dated 02.08.2001 wherein, while giving details before the medical Doctor, it had been stated by the claimant that he was hit by a bus near Tiruppur.

10. The fact that the accident had occurred owing to the collision caused with the bus has been established. Ex.P1 First Information Report in Crime No.558/2007 has been questioned by the learned counsel for the appellant in C.M.A.No.160 of 2017 stating that there was a delay in lodging the FIR. But a person who has been hospitalised for 36 days will necessarily lodge the complaint only with some delay. It is also seen that the First Information Report was registered on 07.08.2007 itself by P.Lakshmanan, who was working as a Tailor. In the First Information Report relating to the nature and the manner in which the accident occurred, the registration number of the State Transport Corporation Bus had been given as TN 33 N 1717. If this fact is correct, then the appellant should have questioned this statement in the FIR in manner known to law. The appellant in C.M.A.No.160 of 2017 should have questioned the registration of the First Information Report mentioning the particular registration number of the bus. The learned counsel for the appellant is also not informed as to what had happened subsequent to the registration of the FIR whether a final report was filed before the jurisdictional Magistrate Court. Therefore, the finding of the Tribunal that the accident had occurred only due to the collision with the State Transport Corporation Bus and that the particular bus had the registration No.TN 33 N 1717, cannot be brushed away. I would go with that particular finding.

11. Once that fact has been established, the next step is determination of the compensation which has been granted and whether any interference by this Court is required.

12. Mr.Ma.P.Thangavel, learned counsel stated that fixing the salary of Rs.3,000/- was far below the norm in the year



2007. The Tribunal had taken into account the fact that the injured was working as Supervisor, I would revise that particular amount to Rs.6,000/- per month. The disability has been determined by the Doctor at 50% as partial permanent and the Tribunal had taken it as 45%. I do not think any interference is required on that particular aspect. The learned counsel submitted that some compensation should have been granted for loss of marital prospects and the Tribunal had negatived such claim. In this connection, Mr.Ma.P.Thangavel, learned counsel for the appellant relied upon the decision of the Karnataka High Court, reported in CDJ 2019 Karnataka High Court 1206 [Suresh Naik Vs. K.Dinesh Kumar and another], wherein a Division Bench of the Karnataka High Court had so granted in a case where the accident suffered had resulted in the claimant to lose his manhood.

13. It is stated that the claimant herein is also placed in similar circumstance. To that extent, it would have been appropriate on the part of the claimant to have produced medical evidence to show that he cannot consummate and that he could not get married and cannot perform the obligations of marital life. There is absolutely no evidence in that regard.

14. I would therefore restrict the upward revision for the Salary from Rs.3,000/- per month to Rs.6,000/- per month. Let me not interfere with other aspects. This would indicate that the calculation of grant of award therefore is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity [45% X 6000]	Rs.1,35,000/-	Rs.2,70,000/- -	Enhanced
2.	Medical Expenses	Rs.2,11,421/-	Rs.2,11,421/- -	Confirmed
3.	Pain and Sufferings	Rs.10,000/-	Rs.10,000/-	Confirmed
4.	Mental Agony	Rs.10,000/-	Rs.10,000/-	Confirmed
5.	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Transportation	Rs.5,000/-	Rs.5,000/-	Confirmed
7.	Loss of income (Rs.6,000/- X 5)	Rs.30,000/-	Rs.30,000/-	Confirmed
Total Compensation		Rs.4,11,421/-	Rs.5,46,421/- -	Enhanced by Rs.1,35,000 /-



15. Accordingly, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is allowed. The compensation awarded by the Tribunal at Rs. Rs. 4,11,421/- is hereby enhanced to Rs. 5,46,421/- [Rupees Five Lakhs Forty Six Thousand Four Hundred and Twenty One only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant/State Transport Corporation is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1172 of 2010, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Tiruppur. On such deposit, the claimant is permitted to withdraw the same after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. Since this Court had enhanced the compensation, the claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in this appeal.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Additional Subordinate Judge,
Motor Accident Claims Tribunal, Tiruppur.

2. The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.K.J.Sivakumar, Advocate Sr.NO.10647

+1 cc to Mr.Ma.pa.Thangavel, Advocate Sr.NO. 10606

C.M.A.No.160 of 2017 and
Cross Objection No.49 of 2019

AK II(CO)
A.SK(22/04/2022)