

(2014) 06 MAD CK 0007

In the Madras High Court

Case No : CMA No.440 and 991 of 2013 and MP No.1 of 2013

M.Santha Kumar

APPELLANT

Vs

TNSTC (Villupuram Division) Ltd.

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Citation : (2014) 2 TNMAC 166

Hon'ble Judges : Mr. S. Rajeswaran and Mr. S. Vaidyanathan, JJ.

Bench : Division Bench

Advocate : Mr. N.M. Muthurajan, Advocate, for the Appellant in CMA 440 of 13 & For Respondent in (CMA 991 of 13); Mr. S. Sairaman, Advocate, for the Appellant in CMA 991 of 13 & For Respondent in CMA 440 of 13

Final Decision : Disposed Off

Judgement

S. Rajeswaran, J.—Both the appeals are arising out of the same accident, hence, by consent, both the appeals are taken up together in common.

2. CMA No.991 of 2013 is filed by the Transport Corporation questioning the quantum of compensation awarded by the Tribunal in MCOP No.3356 of 2009 dated 17.8.2012.

3. CMA No.440 of 2013 is filed by the injured himself seeking for enhancement of the compensation awarded by the Tribunal.

4-5. The brief facts are as follows:-

On 19.6.2009 at 20.15 hours, when the petitioner was travelling as passenger in the bus belonging to the appellant-Transport Corporation bearing Registration No.TN-21-N-1075, from Chennai to Puducherry along the East Coast Road, from North to South direction and while the said bus was so proceeding near Boomieswaran Koil, Marakkanam, the driver of the bus drove the same in a rash and negligent manner and grazed against an up coming unknown van, due to which the right hand of the injured was severed. On account of the said accident,

the injured lost his right hand from the shoulder level and it was amputated. Since the accident had occurred due to the rash and negligent driving of the driver of the appellant Transport Corporation, the injured himself filed a claim petition viz., MCOP No.3356 of 2009 before the Tribunal, claiming a compensation of Rs.36,00,000/- together with interest and costs. On the basis of the oral and documentary evidence let in before the Tribunal by either side, the Tribunal i.e., Motor Accidents Claims Tribunal (III Court of Small Causes) Chennai, by its award dated 17.8.2012, awarded a compensation of Rs.20,15,000/- together with 7.5% interest per annum from the date of the petition till the date of deposit and costs. Aggrieved against the compensation awarded by the Tribunal, both the appellant Transport Corporation and the injured have filed the above appeals as stated above.

6. This Court, at the time of admission of CMA No.991 of 2013 on 21.3.2013, granted a conditional order of stay, directing the appellant Transport Corporation to deposit 50% of the award amount, within a period of four weeks from the date of receipt of a copy of that order, to the credit of MCOP No.3356 of 2009 on the file of the Motor Accidents Claims Tribunal (III Small Causes Court), Chennai. It was also made clear therein that the failure to comply with the conditional order would result in the stay granted on that date would stand vacated automatically without further reference to this Court. On 1.4.2014 on the petition filed by the injured for withdrawing the deposited amount, directed the petitioner/injured to withdraw the entire amount deposited by the appellant Transport Corporation, this Court, by its order dated 1.4.2014, permitted the injured to withdraw only 50% of the amount deposited by the appellant Transport Corporation. It is admitted that the injured has withdrawn the said amount on the orders passed by this Court on 1.4.2014.

7. The learned counsel for the appellant Transport Corporation, while assailing the award passed by the Tribunal, would submit that the Transport Corporation is aggrieved by the compensation awarded by the Tribunal only on one ground viz., that the income of the injured as fixed by the Tribunal at Rs.10,000/- per month was without any basis and that the injured was self-employed and he was 38 years of age at the time of accident. According to the learned counsel for the appellant Transport Corporation, the income of Rs.10,000/- per month has been determined by the Tribunal without any evidence let in. In the absence of any evidence let in or a document produced by the injured, his income has been unilaterally fixed at Rs.10,000/- per month by the Tribunal, which is on the higher side and liable to be interfered with. Thus, he adds that the compensation awarded is excessive warranting interference.

8. Per contra, the learned counsel appearing for the injured and appellant in CMA No.440 of 2013 would submit that the injured was self-employed viz., he was running a small scale industry, which is duly certified by the competent authority, to make upper shoes. He also produced a statement from the Bank for the year 2007-2009 viz., the State Bank of India, in which he had personal accounts to

substantiate that he was depositing more than Rs.10,000/- per month. In fact, the injured had claimed Rs.40,000/- per month as his monthly income. Despite that, the Tribunal has taken only Rs.10,000/- per month, which according to him is very much low, as it should have fixed a higher amount as he was a skilled person. Further, he adds that the future prospects had not been taken into account by the Tribunal. According to him, 50% ought to have been taken as future prospects. With regard to loss of earning, he submits that by 80% disability assessed by the doctor before the Tribunal and he being a skilled person, he lost his earning capacity by way of this right hand amputation, in which case 100% loss of earning capacity should have been taken by the Tribunal. Therefore, he adds this Court should take into consideration all these aspects and enhance the compensation.

9. We have heard the rival submissions on both sides. After hearing the submissions of the learned counsel on either side and we have also gone through the award and the judgment of the Motor Accidents Claims Tribunal (III Small Causes Court), Chennai made in MCOP No.3356 of 2009, dated 17.8.2012, we modify the compensation as follows:-

"The compensation as fixed by the Tribunal excepting the four heads viz., the mental agony, due to losing of right hand, fixed by the Tribunal as Rs.1,00,000/- has been enhanced to Rs.1,50,000/- (Rs.50,000/- enhanced). With regard to the future transport expenses, where the injured had claimed Rs.25,000/-, no amount was awarded by the Tribunal. Therefore, we award an amount of Rs.50,000/-. With regard to the compensation for pain and sufferings, the injured had claimed an amount of Rs.3 lakhs, but only an amount of Rs.25,000/- was awarded by the Tribunal, which is increased to Rs.1,00,000/-, as the injured person is aged about 38 years of age and has suffered a lot from the amputation of the right hand from shoulder level. Hence, we are awarding, as against Rs.25,000/-, a sum of Rs.1,00,000/- as a reasonable sum. With regard to the compensation for permanent disability, though the injured had claimed Rs.5,00,000/-, no amount was awarded by the Tribunal. In our considered opinion, the injured, being a skilled labour and having a small scale industry, certified by the competent authority, is unable to work, as there is amputation from shoulder level, 80% disability considered is not fair and it will have to be taken at 100%, as he is not able to do any work at all. Therefore, taking into consideration of this, we are awarding a compensation of Rs.2,00,000/-.

10. Hence, considering all these aspects, the amount of compensation is enhanced to Rs.3,75,000/- more, as against Rs.20,15,000/-, awarded by the Tribunal. Thus the total award of compensation is enhanced from Rs.20,15,000/- to Rs.23,90,000/- viz., Rs.3,75,000/- has been added more, on the heads as stated above. Since the appellant-Transport Corporation had already deposited 50% of the awarded amount, on principal alone has only been deposited, the respondent-Transport Corporation is hereby directed to deposit the entire award amount viz., the balance of 50% of the principal amount together with

proportionate interest and costs and the enhanced amount of Rs.3,75,000/-, within a period of six weeks from the date of receipt of a copy of this order, to the credit of MCOP No.3356 of 2009 on the file of the Motor Accidents Claims Tribunal (III Small Causes Court), Chennai, without fail. On such deposit being made by the respondent-Transport Corporation, the injured/claimant is permitted to withdraw the entire amount by filing appropriate petition before the Tribunal. Consequently, CMA No.991 of 2013, the appeal filed by the appellant-Transport Corporation is dismissed and the CMA No.440 of 2013, the appeal filed by the injured/claimant is partly allowed with the above modifications. No costs. Consequently, the connected miscellaneous petition is closed.