

(2015) 01 MAD CK 0018

In the Madras High Court

Case No : CMA. Nos. 3480 and 3683 of 2014 & CMA. Nos. 3480 of 2014

R. Ramesh

APPELLANT

Vs

The Managing Director, Tamil Nadu State Transport
Corporation

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) 2 ACC 839 : (2017) ACJ 370 : (2015) 1 TNMAC 555

Hon'ble Judges : Mr. N. Kirubakaran, J.

Bench : Single Bench

Advocate : Mr. Ma. P. Thangavel, Advocate, for the Appellant; Mr. D. Venkatachalam, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. N. Kirubakaran, J. - One of these appeals has been preferred by the Transport Corporation and another by the claimant against the very same award passed by the Tribunal. Therefore, both the appeals are heard together and disposed of by this common judgement. The parties are referred to as claimant and Transport Corporation as arrayed in the claim petition. On 23.4.2010, when the claimant was riding his motor vehicle, which was hit by the Transport Corporation and he sustained injuries. Therefore, the claim petition. On contest, the Tribunal found that the accident occurred because of contributory negligence on the part of claimant as well as driver of the Transport Corporation, fixed 25:75 negligence on both and awarded a sum of Rs. 6,20,307/-.

2. Mr. Ma. Pa. Thangavel, learned counsel appearing for the claimant and Mr. D. Venkatachalam, learned counsel appearing for the Transport Corporation.

3. A perusal of the award would show that when the claimant was coming from a sub road to the main road, the accident occurred. PW3-Eye witness as well as the driver of RW1 were examined. P.W.3 categorically stated, though the

claimant came from the Sub-road to the main road, the bus which was driven rash and negligently caused the accident. Whereas, RW1 would depose that the claimant without noticing the bus which was coming on the main road, tried to cross the main road from sub-road in his motor cycle. In spite of the bus swerving towards right sight, the motor cycle driven by the claimant hit at the front portion of the bus, causing the accident.

4. Analysing the evidence on record, the Tribunal found that both the drivers of the vehicles are responsible for the accident and that if both the drivers were cautious enough in driving the vehicle very slowly, they could have avoided the accident. As the Bus is the bigger vehicle 75% negligence was rightly fixed on the driver of the bus. The said finding is based on the evidence. That apart, the above view is very pragmatic and therefore, the finding of the Tribunal that RW1 as well as claimant committed contributory negligence, cannot be disturbed. Accordingly 25% negligence on the part of the claimant and 75% negligence on the part of the bus driver was rightly fixed by the Tribunal and the same cannot be interfered with.

5. The claimant sustained head injuries and multiple fractures. He was admitted at Theepthi Hospital, Namakkal firstly and later shifted to SKS hospital, Salem, where he took treatment from 23.4.2010 to 26.4.2010 as inpatient. Further he was hospitalized from 26.4.2010 to 14.5.2010 at Vinayaga Mission Hospital, Salem. Again he was admitted in Annapooraniyammal Medical College Hospital, Salem on 14.5.2010 for giving Physiotherapy treatment. PW2-Doctor deposed that the claimant sustained brain injury and lost understanding and thinking. He further deposed that the claimant also suffered by vertigo, Fuzziness, in inchoharant speech and headache. That apart, the claimant's right upper and lower limbs got paralysed and the movement of his right leg and knee joint is restricted. PW2, further deposed that the claimant suffered stiffness over the right knee, hip joints and right leg joints. Because of the injuries, the claimant is unable to walk alone and he is not able to climb staircase and he could not sit and stand without assistance of a person. Ex.P14, CT Scan and Ex.P15, CT Scan report would show that the left temporal and parietal lobes resolved contusion with gliosis. The medical records and the Doctors' evidence clearly stated that the brain of the claimant has got affected and due to that he suffers paralysis of right lower and upper limbs. The claimant is also unable to do continue his day to day works without help of other person. As per medical records, the disability was assessed at 70% and the Tribunal ought not to have assessed disability suffered by the claimant is 50% in the absence of any contra evidence. Medical records and categorical assessment made by the Doctors namely Exs.P3, Wound certificate dated 23.4.2010, Ex.P4, 26.4.2010, Discharge summary SKS Hospital, Salem, Ex.P5, Discharge summary Vinayaga Mission, Salem dated 14.5.2010, Ex.P6, Discharge summary Annapooraniammal Hospital, Salem dated 26.6.2010, Ex.P7, Medical Bills, Ex.P8, Medicine Prescription Bills, Ex.P9, Blood and Urine reports-24 Nos, Ex.P10, Scan film-5, Ex.P11, Scan report-7 dated 23.4.2010, Ex.P12, X-ray 9 Nos., Ex.P14, Scan film, Ex.P15, Scan report dated 20.1.2012,

Ex.P.16, Disability Certificate and Ex.17, Receipts-5, except P13, Driving licence, would undoubtedly prove that the claimant has suffered 70% disability. Therefore, this Court redetermines the disability at 70%. Since it is proved to be driver by Ex.P13, Driving Licence, the claimant lost his avocation due to injuries. When the claimant is not able to do day to day works by himself, it is unimaginable that he would work and earn money and therefore, there is 100% loss of earning capacity to the claimant.

6. The Tribunal determined the monthly income at Rs. 4000/- and adopted multiplier-17 as per the second schedule and determined the loss of income at Rs. 4,08,000/-. In this case, the date of accident is 23.4.2010. Though the learned counsel for the claimant relied upon a judgement of the Hon''ble Supreme Court in Neeta & others v. The Divisional Manager, MSRTC, Kolhapur reported in CDJ 2015 SC 031 where Rs. 12,000/- was fixed as monthly income of the claimant, in Syed Sathiq etc. v. The Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TN MAC 459, for a vegetable vendor, who sustained injuries in the accident which occurred on 14.2.2008, the Hon''ble Supreme Court determined the income at Rs. 6500/- per month and added 50% towards future prospects and determined the monthly income at Rs. 9750/- per month. Therefore, following the said judgement, including future prospects, this Court redetermines the monthly income of the injured at Rs. 9750/- per month, instead of Rs. 4000/- per month. Following the judgement in Sarala Verma v. Delhi Transport Corporation & another reported in 2009 (2) TN MAC 1, appropriate multiplier for a person aged about 23 years is-18 and therefore, the loss of income is calculated as follows: $\text{Rs. } 9750 \times 12 \times 18 = 21,06,000/-$.

7. It is seen from the records that the claimant was unable to come to the court to give evidence and therefore, his mother was permitted to depose on his behalf, as PW1. It is evident from the records that the claimant is a bachelor. It is impossible for any lady to come forward to marry the claimant with his deplorable condition. Therefore, a sum of Rs. 1,50,000/- is awarded towards loss of marital prospects. The claimant suffered many injuries including brain injury and therefore, a sum of Rs. 75,000/- is awarded towards pain and suffering. All the medical records would show that the claimant was hospitalized during treatment and he continues to take treatment. However, the Tribunal did not admit the Physiotherapy fee of Rs. 47600/- claimed and only awarded a sum of Rs. 20,000/-. As per the findings of the Tribunal on that score this court confirms Rs. 20,000/-.

8. Since the claimant had to be taken to various hospitals to be treated and given Physiotherapy regularly, for transportation a sum of Rs. 50,000/- is awarded. No amount was awarded towards attender charges during the period of treatment as well as staying in the house. Though, in Kavita v. Deepak and others reported in 2012 (2) TN MAC 362 (SC) the Hon''ble Supreme Court, where the claimant who is in vegetative status, awarded a sum of Rs. 6,00,000/- towards attender charges. This Court awards a sum of Rs. 1,00,000/- towards

attender charges, as the claimant has to depend upon other person even for his essential works, as deposed by the Doctors.

9. The claimant continues to take treatment and he has to continue Physiotherapy treatment also and therefore, a sum of Rs. 1,00,000/- is awarded towards future medical expenses. As far as amenities is concerned, the claimant is unable to do his normal activities, lost his speech, perception and his lower and upper limbs got paralysed and therefore, a sum of Rs. 1,00,000/- is awarded in that head.

10. Since, 25% negligence is fixed on the claimant, 25% of the entire award amount has got to be deducted. The total modified award amount is Rs. 27,01,000/- - 25% = 20,25,750/- rounded off to 20,25,000/-. The Transport Corporation is directed to deposit the entire amount as per the modified award along with interest and costs in favour of the claimant on or before 29th March, 2015 failing which, the Chairman, Managing Director and Finance adviser-cum-Chief Accountants Officer of the Transport Corporation shall appear before this Court on 30.3.2015. On such deposit, the claimant is permitted to withdraw 50% of the modified award amount and the balance 50% of the modified award amount shall be deposited in interest bearing fixed deposit at least for a period of three years.

11. The appeal filed by the claimant C.M.A.No.3480 of 2014 is allowed enhancing the award amount from Rs. 4,65,200/- to Rs. 20,25,000/-. The other appeal CMA.No.3683 of 2014 filed by the Transport Corporation is dismissed. No costs. Consequently connected M.P.No.1 of 2014 in CMA.No.3683 of 2014 is also dismissed. The claimant is directed to pay the balance court fee as per the modified award passed by this Court.

12. Though the claimant has sought for only Rs. 10,00,000/-, on understanding and appreciating the present status of the claimant, as proved by the medical evidence namely PW 2 and 4 that due to brain injury, paralysis was suffered by the claimant, this court awards Rs. 20,25,000/- over and above the amount claimed in the claim petition, in an attempt to give just and reasonable compensation. Call the matter on 30.3.2015 either for compliance or for appearance of the Chairman and Managing Director of the Transport Corporation and Finance Adviser-cum-Chief Accountants Officer of the Transport Corporation.