

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2015

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THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 1084 of 2015

&

M.P. No. 1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram - 605 602. ..Appellant/Respondent

Vs.

Raji ..Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 30.07.2014 passed in M.C.O.P. No. 74 of 2013 by the Motor Accidents Claims Tribunal (Addl. Subordinate Judge) at Tiruvannamalai.

For Appellant :: Mr.K.J. Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Transport Corporation as against the award of Rs.3,25,000/- passed by the Motor Accidents Claims Tribunal (Addl. Sub Court), Tiruvannamalai, in favour of the respondent, for the disability sustained by him, due to the injuries caused in the accident, which occurred on 30.09.2012.

2. Heard Mr.K.J. Sivakumar, learned counsel for the appellant, who would submit that the amounts awarded towards "Attendant Charges" and "Pain and Suffering", namely, Rs.50,000/- each, are on the higher side. Therefore, he seeks reduction of the amounts.

3. However, a perusal of the records would show that the claimant sustained crush injury on his right leg, laceration on his right foot as well as on his left foot. He was admitted in Government Hospital, Tiruvannamalai and later shifted to JIPMER Hospital, Pondicherry where his right leg was amputated below knee. P.W.2 Doctor assessed the disability at 85% and the Tribunal, in the absence of any contra evidence, rightly fixed the disability at 85%. However, only a sum of Rs.1,70,000/- was awarded towards "Permanent Disability"

@ Rs.2000/- per percentage of disability. This is a case of amputation where multiplier method is required to be adopted. But, the Tribunal mechanically went by percentage calculation and therefore, the said calculation is set aside.

4. The respondent/claimant was aged about 60 years, at the time of accident, alleged to be earning about Rs.9000/- per month. Considering the fact that the accident occurred on 30.09.2012, even as a Watchman, the claimant would have earned a sum of Rs.6000/- per month. Therefore, Rs.6000/- is fixed as the monthly income of the respondent/claimant. Though the disability sustained by the claimant was fixed at 85%, with amputated leg, it may not be possible for him to work any more and there would be 100% loss of income. The appropriate multiplier, in respect of the age of the claimant, as per the II Schedule to the Motor Vehicles Act, 1988, is 5. Applying the same, "Loss of Income due to disability" is calculated as follows:

Loss of Income due to disability :: Rs.6000 x 12 x 5
:: Rs.3,60,000/-

The amount of Rs.50,000/- awarded towards "Attendant Charges" is on the higher side and the same is reduced to Rs.10,000/-. The other amounts, namely, Rs.15,000/- towards "Loss of Earning" during treatment period; Rs.10,000/- towards "Transportation Charges"; Rs.20,000/- towards "Extra Nourishment" and Rs.50,000/- towards "Pain and Suffering" are reasonable and therefore, confirmed. The sum of Rs.10,000/- awarded towards "Mental Agony" is deleted and adjusted towards "Loss of Amenities". In all, a sum of Rs.4,75,000/- is payable as compensation to the claimant together with interest @ 7.5% per annum.

5. Even though the appeal has been filed by the Transport Corporation, this Court has, suo motu, enhanced the compensation amount payable to the respondent, even in the absence of any appeal/cross-appeal, at the admission stage itself, without notice to the respondent, as there is no necessity for the respondent to be heard in this matter, as he is going to be benefitted only. Only when the rights of parties are likely to get affected, principles of natural justice have to be complied with. When benefit is to accrue to the respondent, there is no need to issue notice to him.

6. Further, an appeal is the continuation of original proceedings and this Court is bound to re-appreciate the evidence and pleadings on record and award just compensation, as contemplated under the Act. The provisions of Motor Vehicles Act are beneficial in nature, which aim at consoling, comforting and compensating the victims of road accidents. This Court has power and jurisdiction under Order XLI Rule 33 CPC to award more compensation and this has also been recognised by the Honourable Apex Court. Hence, in an endeavour to award just and adequate compensation, the award of the Tribunal, to the tune of Rs.3,25,000/- is enhanced to Rs.4,75,000/-.

7. The appellant Transport Corporation is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount already deposited, if any, before the Tribunal, on or before 29th July, 2015, failing which the Chairman cum Managing Director as well as Financial Advisor cum Chief Accounts Officer of the appellant Transport Corporation shall appear before this Court on 30.07.2015. On such deposit being made, the claimant is permitted to withdraw the entire amount within a period of one week thereafter. The claimant shall pay additional court-fee for the enhanced amount, if any.

8. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Connected M.P. Is closed.

9. For reporting compliance, call the matter on 30.07.2015.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
(Addl. Subordinate Court) at Tiruvannamalai.

2. The Chairman - cum-Managing Director
Tamil Nadu State Transport Corporation, (Villupuram) Ltd.,

3. The Financial Advisor -cum- Chief Accounts Officer,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Villupuram 605 002.

+ 1 cc to Mr.K.J.Sivakumar, Advocate SR.29480

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JSV(CO)
Eu 10.07.15

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