

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2015

Coram :

The Hon'ble Mr.Justice N.KIRUBAKARAN

C.M.A.No.1672 of 2015

The Managing Director
Tamil Nadu State Transport
Corporation (Salem) Limited,
No.12, Ramakrishna Road,
Regional Office, Bharathipuram,
Dharmapuri ... Appellant / Respondent

vs

Thangavel .. Respondent / Petitioner

Civil Miscellaneous Appeal filed u/s 173 of Motor Vehicles Act against the judgment and decree dated 28.03.2013 made in MCOP No.396 of 2011 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri.

For Petitioner : Mr.D.Venkatachalam

For Respondent : Mr.M.Selvam for R1

J U D G M E N T

The appeal has been preferred by the transport corporation against the award of Rs.5,50,000/- as compensation for the injuries sustained by the respondent/claimant in the accident occurred on 16.11.2010.

2. Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant/ transport corporation and Mr.M.Selvam, learned counsel appearing for the respondent/claimant.

3. Mr.D.Venkatachalam, learned counsel for the appellant would argue that the tribunal awarded excessive amount by determining the monthly income at Rs.5,000/- in the absence of any material evidence regarding income. Secondly, he would submit that the disability sustained by the claimant is also fixed at higher percentage and therefore, he seeks to reduce the compensation.

4. On the other hand, the learned counsel appearing for the respondent/claimant would support the award passed by the tribunal.

5. However, a perusal of the records would show that the claimant sustained following injuries -

3 cm sutured wound right eyebrow, 3 x 1 cm abrasion left parietal area, 4 cm abrasion right shoulder, tenderness right shoulder, swelling tenderness, abnormal mobility and painfully restricted movements of right thigh, 3 x 2 cm abrasion right leg, swelling tenderness painfully restricted. Movements of right leg - closed degloving over right leg. Right knee - AP/LAT fracture proximal third shaft of right tibia with fibular head fracture, right leg - AP/LAT - fracture proximal third shaft right tibia with fibular head fracture, right femur - AP/LAT comminuted fracture shaft of right femur and right shoulder - AP - right AC joint dislocation.

and he was operated 17.11.2010 for external fixation of right femur and tibia. Though PW2 - doctor, based on medical records, as per Ex.P19 - disability certificate, ascertained the disability sustained by the claimant at 55%, the tribunal took only 44% as loss of earning capacity. Therefore, the said determination cannot be found fault considering the number of fracture and injuries sustained by the claimant and after effects of the injuries.

6. Similarly, Rs.5,000/- determined by the tribunal as monthly income cannot be said to be on the higher side as the claimant is stated to be working in the spinning mill. The adoption of multiplier method to calculate the loss of income is rightly followed by the tribunal as PW3, officer from the mill has adduced in his evidence that after the accident on 16.11.2010, the claimant was able to return to work only on 26.02.2012, i.e. after more than 1½ years and even thereafter also, he was unable to stand for a long time and therefore he left the job. In those circumstances, adoption of multiplier method and determination of monthly income at Rs.5,000/- cannot be set to be on the higher side. As per the age of the claimant, appropriate multiplier 17 was rightly adopted and the loss of income calculated as Rs.4,48,800/- is justifiable. Rs.55,000/- awarded towards medical expenses, Rs.18,000/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.20,000/- towards pain & sufferings and Rs.3,200/- towards attender charges are all reasonable and hence the same are confirmed.

7. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

8. The appellant is directed to deposit the entire award amount, alongwith interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the same. In the event of failure on the part of the appellant/Transport Corporation to deposit the entire award amount alongwith interest and costs, on the aforesaid date, the Chairman cum Managing Director, the Financial Advisor and Chief Accounts Officer shall appear before this Court on the said date.

Post the matter for compliance on 22.09.2015.

Sd/-
Asst. Registrar,

/true copy/

Sub Asst. Registrar.

To

1] The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dharmapuri.

2] The Chairman cum Managing Director,
The Financial Advisor and Chief Accounts Officer,
TNSTC[Salem] Ltd., No.12, Ramakrishna Road,
Regional Office, Bharathipuram,
Dharmapuri.

+ 1 CC to Mr.M.Selvam, Advocate SR 38887

+1 cc to Mr.D.Venkatachalam, Advocate, sr.38779 (22/09/2015)

C.M.A.No.1672 of 2015

VGI[CO]
SRG/21.8.

सत्यमेव जयते

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