

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.10.2015

CORAM :

THE HON'BLE MR. JUSTICE B. RAJENDRAN

C.M.A. No: 3557 of 2010

Metropolitan Transport Corp. Ltd.
Rep.by its Managing Director,
No: 2, Pallavan Salai
Chennai - 600 002. ... Appellant/Respondent

-Vs-

Rajarathinam
S/o. Anthony
No: 110 Mettu Street
Chengalpattu. ... Respondent/Claimant

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 25.09.2008 passed in M.C.O.P. No: 177 of 2006 by the Principal Sub Judge, (Motor Accident Claims Tribunal), Chengalpattu.

For petitioner : M/s. S.S. Swaminathan

For respondent : Mr. UM. Ravichandran

J U D G M E N T

The Transport Corporation is the appellant. This Civil Miscellaneous Appeal is filed challenging the order dated 25.09.2008 passed in M.C.O.P. No: 177 of 2006 by the Principal Sub Judge, Sub Court, (Motor Accident Claims Tribunal), Chengalpattu. The only ground argued was that under the head of loss of income a sum of Rs.1,00,000/- was awarded. According to the appellant, the claimant had only availed medical leave during the period of treatment and there was actually no loss of income and therefore, the amount of Rs. 1,00,000/- would not have been granted under the head loss of income.

2. Before considering the submission made by the learned counsel appearing for the appellant / Transport Corporation, the learned counsel appearing for the respondent claimant submits that the claimant had filed a separate application for enhancement of compensation in SR. No: 89337 of 2015. Since it has not been numbered, he would only contend that the award can atleast be confirmed as it is. He would also submit that subsequent to the award, the claimant's leg has been amputated, which is due to the accident only. He further submits that at the time of accident the claimant was 57 years old and now he has retired and therefore, the question of reduction will not arise.

3. Heard the learned counsel appearing for either side and perused the materials made available on record.

4. A bare perusal of the impugned award reveals that the Court below had awarded a sum of Rs. 1,00,000/- towards loss of income. True it is that the injured claimant had taken medical leave during the period of treatment. The injured was working as a B.T. Assistant Teacher. As per the leave rules, no employee can encash the entire "earned leave" standing to his credit. There is a cap. Subject to the maximum of 10 months, an employee cannot encash all his available leave. The fact remains that the injured claimant was in continuous absence from the school for 192 days and he would not have availed his medical leave but for the accident.

5. While considering the submission of the learned counsel for the appellant that the claims Tribunal had wrongly granted a sum of Rs. 1,00,000/- towards loss of income while the claimant had availed his medical leave, this Court must also consider the submission of the learned counsel appearing for the injured claimant that subsequent to the award passed by the Tribunal, the leg of the claimant was amputated and hence, he had filed a petition for enhancement of the compensation.

6. Thus, keeping in mind, the submission made by the learned counsel on either side, this Court is of the view that the compensation granted by the Tribunal is fair and reasonable and it needs no interference. Accordingly, the order impugned is confirmed and the appeal is dismissed. Connected miscellaneous petition is closed. The appellant is directed to deposit the amount awarded within a period of four weeks from the date of receipt of a copy of this order, if

not already deposited. On such deposit being made, the claimant is permitted to withdraw the same. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gp

To

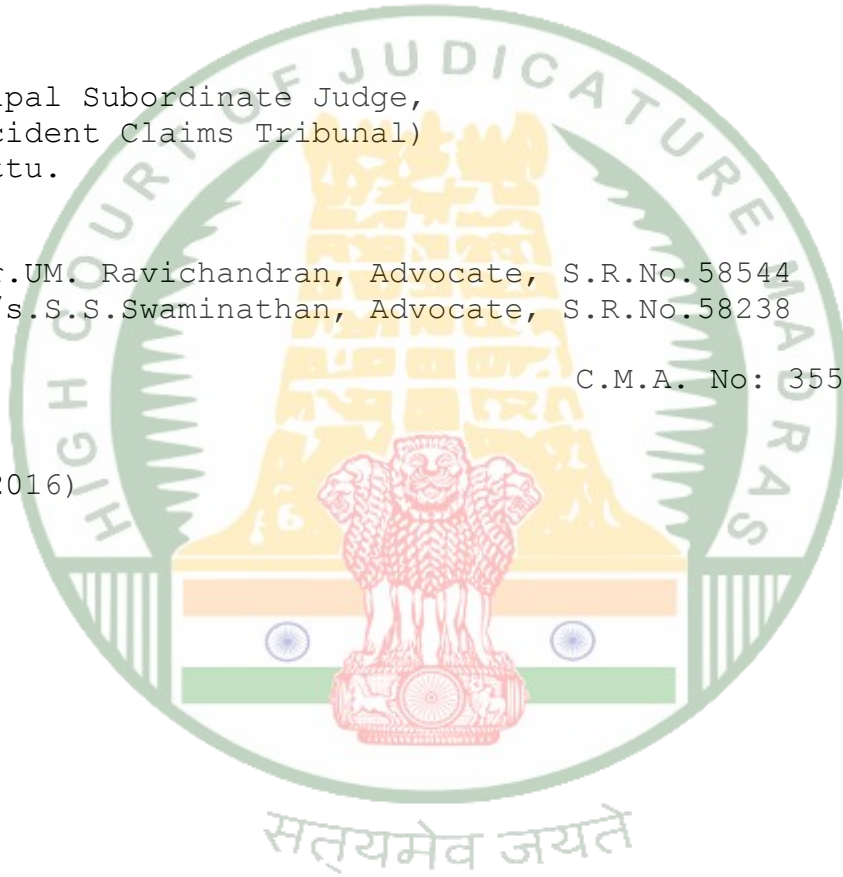
The Principal Subordinate Judge,
(Motor Accident Claims Tribunal)
Chengalpattu.

+1cc to Mr.UM. Ravichandran, Advocate, S.R.No.58544

+1cc to M/s.S.S.Swaminathan, Advocate, S.R.No.58238

C.M.A. No: 3557 of 2010

VD(CO)
CA(29/01/2016)



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