

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1037 of 2016

and

CMP.No.7967 of 2016

Tamil Nadu State Transport
Corporation Limited,
rep by its Managing Director
Dharmapuri

.... Appellant/1st Respondent

Vs.

1. R.Vinod Raj ...1st Respondent/Claimant

2. Cholamandalam M.S.General Insurance

Company Ltd.,

Having Office at No.234,

2nd Floor, NSC Bose Road,

Chennai - 600 001.

....2nd Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 17.12.2012, made in M.C.O.P No.161 of 2011, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Vaniyampadi.

For Appellant : Mr. D.Venkatachalam

For Respondent-1 : -

J U D G M E N T

The Transport Corporation has come up with this appeal challenging the negligence and quantum of compensation awarded by the Tribunal.

2. On 18.11.2008, when the injured claimant was travelling in a TATA SUMO Car along with four others, near Valasaiyur, in between Harur Salem Main Road, the driver of the appellant Transport Corporation bus bearing Registration No.TN 30 N 0128, came in a rash and negligent manner from the opposite side, dashed against the Car on the right side. Due to the accident, the claimant sustained grievous injuries, large lacerated injury on his lower end of right arm with tendons and muscles exposed of, deformity of middle 1/3rd of arm, distal

pulse not felt, sustained abrasion on his right index and right little finger, crush injury on his right upper limb and fracture on right shaft of humerus. Hence, he filed a Claim Petition before the Tribunal seeking a sum of Rs.15,00,000/- as compensation. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.2,14,000/- as compensation, under the following heads:

Sl. No.	Heads	Amount
1	Loss of Earning Capacity	Rs.1,00,000.00
2	Pain and Sufferings	Rs. 10,000.00
3	Permanent Disability	Rs. 10,000.00
4	Extra Nourishment	Rs. 2,000.00
5	Medical Expenses	Rs. 91,788.00
	Total	Rs.2,13,788.00 (r/off) 2,14,000/-

3. Learned counsel appearing for the appellant/Transport Corporation would mainly contend that the Tribunal ought to have fixed contributory negligence against the driver of the car since the accident has occurred due to his rash and negligent driving. The Tribunal has erred in awarding compensation towards permanent disability, inspite of granting compensation towards loss of earning capacity and thus has granted compensation for injuries under two different heads. He further contended that the Tribunal has not considered the deposition of the driver of the appellant Corporation bus RW-1, denying the accident, but has considered the evidence of PW1/ claimant, which has not been corroborated by any other independent witness.

4. It is found from the records that the Tribunal has passed the award based on the documentary evidences and depositions of the witnesses. It has been proved before the Tribunal that the driver of the appellant Corporation bus is responsible for the accident and hence the liability has been fixed on the appellant Transport Corporation. Considering the grievous injuries sustained by the claimant, the period of treatment in the hospital as in-patient from 18.11.2008 to 22.12.2008, the age of the claimant, the Tribunal has granted a reasonable compensation.

5. This Court considered the submissions made by the learned counsel for the appellant and perused the materials available on record. Since the respondent/ claimant will not be prejudiced with the result of this Appeal, the main case itself

is disposed of at the stage of admission itself, without serving notice to them.

6. A perusal of the records would show that the injured claimant was aged 26 years and was working as a driver, at the time of accident. Moreover, he has taken treatment in the hospital as in-patient for more than one month, has undergone surgery and plates were fixed. But, it is evidenced through exhibits that the bones are mal-united and his right hand has been crippled and has become thin and so he is unable to hold anything with the right hand. Hence, the 62% disability assessed by the Doctor, was considered by the Tribunal as 50%. Taking note of the age, disability and avocation, the Tribunal has awarded a just and reasonable compensation, which does not warrant any interference.

7. In fine, the Civil Miscellaneous Appeal is dismissed, confirming the quantum of compensation and the rate of interest at 7% per annum awarded by the Tribunal. The appellant/Transport Corporation is directed to deposit the entire award amount, together with accrued interest, less the amount already deposited, to the credit of M.C.O.P.No.161 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Vaniyampadi, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. No costs. Consequently, the C.M.P. is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To :
The Subordinate Judge
Motor Accidents Claims Tribunal,
Vaniyampadi.

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aa16/08/2016