

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1048 of 2016

and

CMP.No.7982 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Trichy. ... Appellant/3rd Respondent.

Vs.

1. Iswarya
2. Ganapathy
3. National Insurance Company Limited
Anna Nagar, Chennai. ... Respondents/Petitioner &
Respondents 1&2

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 14.08.2012 made in M.C.O.P No.1 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Ariyalur.

For Appellant : Mr. D.Venkatachalam

For Respondents : -----

J U D G M E N T

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

2. In an accident which occurred on 04.09.2007, at Jeyankondam-Trichy Road, near Aircel Tower, whereby a tanker lorry bearing registration No.TN-30-S-4944 dashed against the appellant Transport Corporation bus, in which the claimant / first respondent who was travelling as a passenger sustained lacerated injuries in both side knee portion, 5 teeth in the upper jaw and 3 teeth in the lower jaw, fell down and suffered severe blow on the head as well as left hand elbow. Hence, she filed a Claim Petition before the Tribunal seeking a sum of Rs.10,00,000/- as compensation. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.4,50,000/- as compensation, under the following heads:

Heads	Amount (Rs.)
Partial Permanent Disability	1,20,000
Private Hospital Expenses	50,000
Extra Nourishment	20,000
Transportation	20000
Loss of good look of face	50,000
Pain and Sufferings	20000
Loss of Education	30,000
Loss of speech	40,000
Loss of good look of teeth	35,000
Operation and fixing of teeth	60,000
Cleaning teeth	5,000
Total	4,50,000

3. Learned counsel appearing for the appellant/Transport Corporation would mainly contend that the Tribunal ought not to have fixed 50% negligence against the driver of the appellant, when the FIR has been registered on the basis of the complaint given by the passenger and without considering the evidence of the driver (RW.1) of the appellant. The learned counsel would also contend that the quantum of compensation awarded by the Tribunal is too high when the Doctor has wrongly fixed the disability at 60% only for dental damage. He would further contend that the Tribunal ought not have awarded compensation under the headings 'loss of good look of face', 'loss of education', 'loss of speech', 'loss of good look of teeth' and 'to clean the teeth'.

4. On the other hand, learned counsel appearing for the first respondent/claimant would submit that this is a fit case for awarding compensation under the heads loss of good look of face, loss of education, loss of speech, loss of good look of teeth and to clean the teeth, because due to the dental disability, the claimant cannot eat, speak and her face is completely disfigured and she is not able to concentrate in her studies. The learned counsel for the first respondent/claimant would also submit that the claimant had also undergone surgery to fix the teeth and hence, the Tribunal has accepted 60% partial permanent disability. The learned counsel would further submit that as the accident took place due to the rash and negligent driving of both the vehicle drivers, the third respondent is vicariously liable for the negligent act of its driver. Therefore, the claimant sought for dismissal of the Appeal.

that due to the rash and negligent driving of the drivers of both the vehicles, the accident occurred. Hence, this Court finds no reason to interfere with the finding of the Tribunal that the appellant Transport Corporation is liable to pay 50% compensation to the claimant.

6. A perusal of the records would show that the injured claimant was 20 years old and studying MCA at the time of accident. Moreover, she has taken treatment in several hospitals at Erode, Tanjore and Jeyankondam and has undergone surgery to fix the teeth. The Tribunal has rightly awarded compensation under the heads loss of good look of face, loss of education, loss of speech, loss of good look of teeth and to clean the teeth. Hence, this Court is not inclined to interfere with the compensation awarded by the Tribunal, taking note of the dental injuries and loss of teeth in upper and lower jaws and the treatment undergone by the claimant. Therefore, the compensation awarded under the above heads is also confirmed. Hence, this Court finds that the quantum of compensation is not excessive and hence the same is confirmed.

6. In fine, the Civil Miscellaneous Appeal is dismissed, confirming the liability, quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. The appellant/Transport Corporation is directed to deposit 50% of the award amount being their liability together with accrued interest, less the amount already deposited, if any, to the credit of M.C.O.P.No.1 of 2008 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ariyalur, 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, connected C.M.P.No.7982 of 2016 is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To
The Subordinate Judge
Motor Accidents Claims Tribunal,
Ariyalur.

C.M.A.NO.1048 of 2016
and CMP.No.7982 of 2016

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