

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2033 of 2016

and

C.M.P. No.14907 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam-Division-I) Limited,
Railway Station New Road,
Kumbakonam. Appellant/Respondent

Versus

S.Arularasan ... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 20.07.2015 made in * **M.C.O.P.No.56 of 2014** on the file of the Motor Accidents Claims Tribunal, (I Additional Subordinate Judge), Cuddalore.

For Appellant : Mr.D.Venkatachalam

For Respondent : Mr.R.Sreedhar

J U D G M E N T

The Managing Director, Tamil Nadu State Transport Corporation has brought this appeal, challenging the correctness of the impugned award dated 20.07.2015 made in * **M.C.O.P.No.56 of 2014** on the file of the Motor Accidents Claims Tribunal, (I Additional Subordinate Judge), Cuddalore, awarding a sum of Rs.3,49,800/- as against the claim of Rs.10,00,000/-.

2.It is the case of the claimant that on 08.07.2013 at about 22.00 hours, while he was proceeding as a passenger in the appellant's Transport Corporation bus bearing Registration No.TN-68-N-0398 on the Chennai to Kumbakonam Salai, on noticing that another vehicle was coming from opposite side, the driver drove it in a rash and negligent manner, without giving way to that vehicle. Due to the same, the vehicle while crossing the bus, came very close to the lateral side of the bus, in which,

the petitioner sustained multiple injuries. According to the claimant, the accident had happened due to the rash and negligent driving of the driver of the above said bus.

3.Learned counsel appearing for the appellant would submit that the learned Tribunal ought not to have taken the permanent disability of the claimant at 50%, which is on the higher side. He would further submit that the learned Tribunal ought not to have passed the award on the head of loss of permanent discomfort, while passing award on the head of permanent disability and therefore, it has to be chosen any one of the heads. Adding further, he would submit that the amount awarded under the head 'pain and sufferings' and 'loss of amenities and enjoyment in life are on the higher side. Therefore, the impugned award passed by the learned Tribunal is liable to be interfered with.

4.But this Court is not able to find any merit on his submissions. The reason is that when the claimant was travelling as one of the passengers in the appellant's Transport Corporation bus, the driver, while crossing taking over another bus, has caused the accident.As a result, the claimant sustained multiple injuries for which he was rushed to Government Headquarters Hospital, Cuddalore on 08.07.2013 and after taking first aid, he was shifted to PIMS Hospital, Puducherry wherein the injured was admitted as in-patient on 09.07.2013 and he was taking treatment as per Ex.P4. till 13.07.2013.

5.A perusal of Ex.P4/discharge summary issued by PIMS Hospital, Pondicherry, clearly shows that the claimant was admitted on 09.07.2013 and discharged on 13.07.2013. This apart, the medical bills marked as Ex.P6 clearly shows that a sum of Rs.24,744.46 has been incurred by him towards the medical expenses. Ex.P7/trip sheet also shows that a sum of Rs.12,500/- has been spent by the claimant. The accident register marked as Ex.P3 clearly discloses that the claimant while travelling as a passenger, has sustained fracture of lateral right humerus bone. Learned Tribunal, considering the disability certificate, certifying that the claimant has sustained 50% permanent disability, issued by Dr.Venugopal, Ortho, who was examined as P.W.2 and also Ex.P9/X-ray and Ex.P4/discharge summary, which clearly show that the claimant has sustained multiple injuries for which he has taken the long course of treatment, has fixed 50% permanent disability and thereby fixing Rs.2,000/- per percentage, has arrived at a sum of Rs.1,00,000/- under the head 'permanent disability'.

6.As the claimant, aged about 49 years being a Contract Labour in Neyveli Lignite Corporation Limited, Neyveli, has sustained multiple injuries namely muscle deep lacerated wound

10 c.m. x 6 c.m. x 5 c.m. exposing the ulna radis/distal lateral condyle, minimal contamination present, fracture fragment of lateral condyle seen, ROM flexion/extension 0-120 degree, pronation supination terminally painful, no diffuse neurovascular deficit, the learned Tribunal has fixed Rs.40,000/- towards pain and sufferings and Rs.60,000/- towards loss of amenities and enjoyment in life, which in my view cannot be termed as exorbitant because during the period of treatment and till recovery, he would not have earned anything. Therefore, the contention made by the learned counsel for the appellant that the amount awarded under the head 'pain and sufferings' and 'loss of amenities and enjoyment in life are on the higher side, is unreasonable. Therefore, this Court is not inclined to interfere with the award passed by the learned Tribunal. Accordingly, the Civil Miscellaneous appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

7. Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant to move a petition before the learned Tribunal for withdrawing the said amount.

Sd/-

Assistant Registrar(CS VII)

Dated : 04.11.2016

***Corrected as per Order dated**

17.11.2016 in CMA.2033 of 2016

Sd/- Assistant Registrar(CS VII)

Dated : 21.12.2016

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal, To be Substituted to the
(I Additional Subordinate Judge),
Cuddalore.

Order already despatched

2.The Section Officer,
V.R.Section, High Court, Madras.

on 07.11.2016

+lcc to Mr.D.Venkatachalam, Advocate Sr.61779

+lcc to Mr.R.Sreedhar, Advocate sr.61787

C.M.A. No.2033 of 2016

scd[col]

rg 07/11/2016

CA(23.12.2016)