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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.78 of 2015
& M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Thiruvannamalai Region,
Thiruvannamalai.

.. Appellant/Respondent

Versus

Seenu

.. Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 02.12.2013 made in M.C.O.P.No.170/2009 on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Thiruvannamalai.

For Appellant : Mr.P.Paramasiva Doss

J U D G M E N T

The Civil Miscellaneous Appeal, filed by the Transport Corporation, is directed against the correctness of the impugned award dated 02.12.2013 made in M.C.O.P.No.170/2009 on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Thiruvannamalai, awarding a sum of Rs.11,44,400/- as against the claim of Rs.15,00,000/- for the multiple injuries sustained by the claimant.

2.It is the case of the claimant before the Tribunal that on 14.01.2009 at about 2.45 p.m., while the claimant was travelling as a passenger along with other co-passengers in TNSTC Bus bearing Registration No.TN-21-N-0940, which was proceeding from Salem towards Thiruvannamalai, the driver of the said bus drove the bus in a rash and negligent manner and turned towards right and in that process, he dashed against a Tamarind tree. Due to the sudden impact, the claimant sustained grievous injuries and other co-passengers also sustained injuries.



Immediately after the accident, the claimant was admitted in the Government Hospital, Salem. Again, he was admitted as in-patient in C.M.C. Private Hospital, Vellore for further treatment. He claimed a sum of Rs.15,00,000/- as compensation. The appellant/Transport Corporation resisted the claim.

3.After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation and awarded a sum of Rs.11,44,400/- as compensation payable to the claimant with interest at the

rate of 7.5%. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4.Heard Mr.P.Paramasiva Doss, learned counsel for the appellant and perused the document on record. On the side of the claimant, P.Ws.1 and 2 were examined and documents Ex.P1 to P12 were marked. On the side of the appellant, no one was examined and no document was marked.

5.Learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award passed by the Tribunal, contended before this Court that the Tribunal ought not to have assessed the permanent disability of the claimant at 95%, which is on the higher side. The Tribunal miserably failed to take into consideration that though as per Schedule 1, Serial No.19 of Workmen's Compensation Act, 1923, the amputation below middle thigh to below knee should be 60%, the claimant cannot be issued with the disability certificate more than 60%. As against the said provision, the Tribunal has wrongly fixed the disability of the claimant at 95%. As a result, the total compensation has been wrongly inflated. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

6.This Court is not able to find any merits in the contentions made by the learned counsel for the appellant. The reason is that the Tribunal while dealing with the disability of the claimant, on the basis of the evidence adduced by P.W.2/Doctor, supported with Ex.P3/disability certificate, issued by Government Hospital, Dharmapuri and Ex.P12/permanent disability certificate, has assessed the same at 95%. Considering the fact that the claimant was aged about 25 years at the time of accident and that he was eking his livelihood as a Masion, the Tribunal has fixed a sum of Rs.4,500/- as notional monthly income, though the claimant claimed a sum of Rs.15,000/- as his monthly salary and following the ratio laid down by the



Hon'ble Apex Court in the case of Sarala Varma and others vs Delhi Transport Corporation and another reported in 2009 (2) TN MAC Volume 2 at Page 1, adopted proper multiplier '18' and arrived at a sum of Rs.9,23,400/- (4500 x 18 x 12 x 95/100) towards loss of future income. That is confirmed as it is.

7.Further it is also seen that due to the said accident, the claimant had suffered amputation of his left leg, therefore, by taking note of the fact that he cannot lead the life like a normal human being, this Court hereby confirms the award amount of Rs.50,000/- towards pain and suffering as awarded by the Tribunal. Similarly, on perusing Ex.P5/Medical Bills as well as Ex.P9/Transport Bills, the Tribunal has awarded a sum of Rs.1,11,000/- towards medical and transportation expenses, apart from awarding a sum of Rs.10,000/- towards extra nourishment, therefore, this Court is not able to see any infirmity in the approach adopted by the Tribunal in awarding a reasonable compensation of Rs.11,44,400/- towards total compensation, hence, the same is hereby confirmed.

8.Since the learned counsel for the appellant submitted that 50% of the award amount has been deposited, the appellant is directed to deposit the balance amount, 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 Tribunal for withdrawing the said amount.

9.In fine, for the reasons stated above, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.Motor Accidents Claims Tribunal,
(Principal Subordinate Judge),
Thiruvannamalai.



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

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1 cc to M/s.P.Paramasivadoss, Advocate, sr.5691

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kra 04.05.2016