

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.75 of 2016

The Managing Director
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited
Periyamilaguparai
Trichy 620 001 ... Appellant/ Respondent

-Vs-

Ilayadevan alias Ilayaraja
S/o Krishnamoorthy ... Respondent/ Petitioner

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 19.8.2014 made in M.C.O.P.No.516 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant :: Mr.D.Venkatachalam

For Respondent :: Mr.T.Gobinath

JUDGMENT

The Managing Director of Tamil Nadu State Transport Corporation (Kumbakonam) Limited, finding fault with the correctness of the impugned award passed by the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur in M.C.O.P.No.516 of 2011 dated 19.8.2014 awarding a total compensation of Rs.4,81,000/- with interest at 7.5% per annum, has brought this civil miscellaneous appeal.

2. Learned counsel for the appellant submitted that the respondent/claimant, a barber aged about 29 years, suffered fracture of his left forehand and that skin grafting was done over his fractured left hand forearm and subsequently re-united, for which the Tribunal, accepting the partial permanent disability of 37% fixed by Dr.Saravanan, P.W.2 after examining the injured P.W.1 Ilayadevan alias Ilayaraja on 16.4.2014, has awarded a sum of Rs.1,11,000/- for partial permanent disability at the rate of Rs.3,000/- per percentage of disability, which is on the higher side. Adding further he submitted that the Tribunal has also awarded a sum of Rs.80,000/- towards loss of future prospects including future medical expenses on the ground

that the claimant being a barber would be unable to meet out that expense in view of his inability to continue the haircutting work. When the doctor-P.W.2 had deposed that the fracture found on the left hand forearm of the injured was re-united, it goes without saying that he is fit for his job. Hence the award of Rs.80,000/- towards the loss of future prospects including future medical expenses is unwarranted, he pleaded.

3. But I find no merit in both the contentions. The reason is that the poor claimant had boarded the bus bearing Registration No.TN-45-N-1916 belonging to the appellant Corporation on 22.5.2011 at Thittakudi to go to his village and when the bus was proceeding towards Ariyalur direction at about 6.30 p.m., near the lake of Karuppattankurichi, when the driver of the bus attempted to overtake the lorry bearing Registration No.TN-04-P-1482 which was going ahead of the bus, the claimant was hit by the lorry. Since the accident happened due to the reckless and negligent driving by the driver of the bus, the claimant suffered multiple grievous injuries including fracture, for which skin grafting was done over his left hand forearm. Therefore he was admitted as an in-patient in Sri Gokulam Hospital, Salem from 25.5.2011 till 19.6.2011 and was taking treatment for the injuries and fracture. After his discharge, he continued his treatment privately by spending more amount towards his medical expenses. These facts were brought forth before the Tribunal for claiming a total compensation of Rs.5,00,000/-. When the Tribunal, after giving a clear and categorical finding that the claimant suffered multiple injuries while travelling as a passenger in the bus bearing Registration No.TN-45-N-1916 belonging to the appellant and that skin grafting was also done on his left hand forearm based on the evidence let in by the doctor-P.W.2, has come to the conclusion that it would be difficult for the claimant to work by using his left hand and also to lift heavy objects with his left hand accepting the disability certificate issued by the doctor marked as Ex.P7 certifying 37% partial permanent disability, in my considered opinion, the said finding cannot be found fault with for awarding a sum of Rs.1,11,000/- at the rate of Rs.3,000/- for each percentage of disability.

4. Secondly, when the claimant was admitted as an in-patient in Sri Gokulam Hospital, Salem and taking treatment from 25.5.2011 till 19.6.2011 and that skin grafting was also done on his left hand forearm, this Court is not able to find any infirmity in the award of a sum of Rs.50,000/- towards pain and suffering by the Tribunal. Thirdly, the appellant also has not challenged the compensation granted towards the medical expenses as per Exs.P4 & P11 series. Therefore the other grievance of the appellant that the Tribunal ought not to have granted a sum of Rs.80,000/- towards loss of future prospects including future medical expenses is required to be answered. Indeed, when the

claimant had suffered fracture of his left forehead and also underwent skin grafting over his left hand forearm and these facts were sufficiently proved by Dr.Saravavan, P.W.2 through his deposition supported by the disability certificate that the claimant would find it difficult to lift heavy objects with his left hand, again this Court finds that the award of a reasonable compensation of Rs.80,000/- towards loss of future prospects including future medical expenses to the claimant being a barber cannot be found fault with. Therefore the appeal fails and it is dismissed. Since only a sum of Rs.25,000/- had been deposited, the appellant is hereby directed to deposit the entire balance amount of compensation together with interest to the credit of the M.C.O.P.No.516 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur within a period of four weeks from the date of receipt of a copy of this order. Needless to mention that it is open to the respondent/claimant to withdraw the same by moving appropriate application before the Tribunal. Consequently, C.M.P.No.701 of 2016 is also dismissed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

ss

To

The Principal District Judge
Motor Accidents Claims Tribunal
Perambalur

1 cc to Mr.D. Venkatachalam, Advocate, Sr. 2828
1 cc to Mr.T. Gopinath, Advocate, Sr. 2809

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