

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. No.876 of 2016

&

C.M.P. No. 7041 of 2016

The Managing Director,
Tamil Nadu State Transport
Corporation
Villupuram.

..Appellant/Respondent

Vs.

Sellabanki

..Respondent/Claimant

Prayer: Civil Miscellaneous Appeal as against the order and decreetal order dated 30.09.2015 made in M.C.O.P. No.14 of 2014 on the file of Motor Accidents Claims Tribunal, II Additional District Court, Chidambaram.

For Appellant :: Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the Transport Corporation as against the order and decreetal dated 30.09.2015 made in M.C.O.P. No.14 of 2014 on the file of Motor Accidents Claims Tribunal, II Additional District Court, Chidambaram.

2. In an accident that took place on 14.09.2013, a 55 year old working as Masonry Assistant, who sustained fracture in her right hand and multiple injuries all over the body had approached the Tribunal claiming compensation to the tune of Rs.5,00,000/-.

3. The Tribunal based on the oral evidence of the witnesses, and the documentary evidence, granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No	Head	Amount granted by the Tribunal
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1	Loss of Future Earnings	Rs.1,89,000/-
2	Loss of Income for three months	Rs. 13,500/-
3	Pain and Sufferings	Rs. 25,000/-
4	Concurrence	Rs. 20,000/-
5	Medical Expenses	Rs. 10,000/-

6	Future Medical Expenses	Rs. 30,000/-
7	Attender Charges	Rs. 9,000/-
8	Transportation	Rs. 5,000/-
	Total	Rs.3,01,500/-

4. Aggrieved over the said award, the Transport Corporation has come forward with this Civil Miscellaneous Appeal.

5. The main contention of the learned counsel for the appellant/Corporation is that in the absence of proof of the income of the injured, the Tribunal ought not to have fixed the monthly income at Rs.4500/-. He further contended that the Tribunal ought not to have adopted multiplier method to calculate the loss of future earnings of the injured. Hence, he prayed for interference of this Court and in any event, according to him, the compensation should be reduced.

6. A glance of the award of the Tribunal would make it clear that pursuant to the accident that took place on 14.09.2013, the injured sustained fracture in right shoulder scapula and fracture in right elbow and she was treated in Government Hospital, Chidambaram and then taken to Government Hospital, Cuddalore. The Tribunal, taking note of the fracture and injuries sustained viz., all over the body as evident from the evidence of P.W.2 Doctor, who has assessed the disability at 50%, reduced the disability to 35% and by adopting multiplier '7', arrived at Rs.1,89,000/- as loss of Future Earnings which appears to be on the higher side. Taking note of the fact that the Tribunal has fixed the disability at 35% and in view of the decision of this Court in KUPPUSAMY V. M. THIRUMAL & OTHERS reported in CDJ 2015 MHC 2735, the Tribunal could have awarded Rs.3,000/- per percentage of disability and hence, the loss of future income is arrived at Rs.1,05,000/- (Rs.3000 x 35%). The Honourable Apex Court, in the judgment rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), in respect of a vegetable vendor, who sustained injuries in an accident which occurred in 2008, determined Rs.6500/- as the monthly income. Taking note of the Syed's case referred to above, since the accident in this case had occurred in the year 2013, in the absence of any proof, this Court is of the view that the monthly income of the injured should be fixed at Rs.6,500/- and due to the injuries sustained by the victim, a sum of Rs.39,000/- (Rs.6,500 x 6) has to be awarded under the head 'loss of income' for six months. The amount of Rs.25,000/- awarded under the head 'pain and sufferings' appears to be inadequate and hence, this Court is of the view that a sum of Rs.45,000/- has to be awarded under this head. Accordingly, by deleting the sum of Rs.20,000/- awarded under the head 'Inconvenience', the said amount of Rs.20,000/- is merged with the head 'pain and suffering' at Rs.45,000/-. A sum of Rs.10,000/- under the head 'medical expenses' awarded by the Tribunal appears to be very low and a sum of Rs.42,000/- is hereby awarded instead of Rs.10,000/-. The injured was admitted for treatment as inpatient from 14.09.2013 to 22.09.2013 and also, still she is taking

treatment in private hospitals. Considering the same, this Court is of the view that a sum of Rs.15,000/- has to be awarded under the head 'Extra Nourishment' and the Tribunal has awarded a sum of Rs.30,000/- under the head 'Future Medical Expenses' which also appears to be on the higher side and the same has to be reduced to Rs.26,500/-. The Tribunal has awarded a sum of Rs.5,000/- and Rs.9,000/- under the heads 'Transportation' and 'Attendant Charges' which are said to be inadequate and hence, they are enhanced to Rs.15,000/- each under the head 'Transportation' and 'Attendant Charges'. Accordingly, the compensation of Rs.3,01,500/- awarded by the Tribunal is modified, as detailed below :

Sl.No .	Head	Amount granted by the Tribunal	Amount converted by this Court
1	Loss of Future Earnings	Rs.1,89,000/-	Rs.1,05,000/-
2	Loss of Income for three months	Rs.13,500/-	Rs.40,000/-
3	Pain and Sufferings	Rs.25,000/-	Rs.45,000/-
4	Inconvenience	Rs.20,000/-	-
5	Medical Expenses	Rs.10,000/-	Rs.42,000/-
6	Future Medical Expenses	Rs.30,000/-	Rs.26,500/-
7	Attender Charges	Rs.9,000/-	Rs.15,000/-
8	Transportation	Rs.5,000/-	Rs.15,000/-
9	Extra Nourishment	-	Rs.15,000/-
	Total	Rs.3,01,500/-	Rs.3,01,500/-

Hence this Court finds no reason to interfere with the compensation awarded by the Tribunal and hence the appeal is dismissed. No costs. Connected miscellaneous petition is closed.

7. The Appellant Transport Corporation is directed to deposit the entire award amount together with proportionate costs and interest @ 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.14 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Chidambaram, if not received by the date of receipt of a copy of this order and on such deposit being made, the respondent herein/claimant is entitled to make necessary

application to withdraw the same. The Trial Court is expected to follow the procedures contemplated in the order dated 11.03.2016 passed by a Division Bench of this Court in C.M.A.No.428 of 2016 scrupulously. There will be no order as to costs in this appeal. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(V)

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Sub Assistant Registrar

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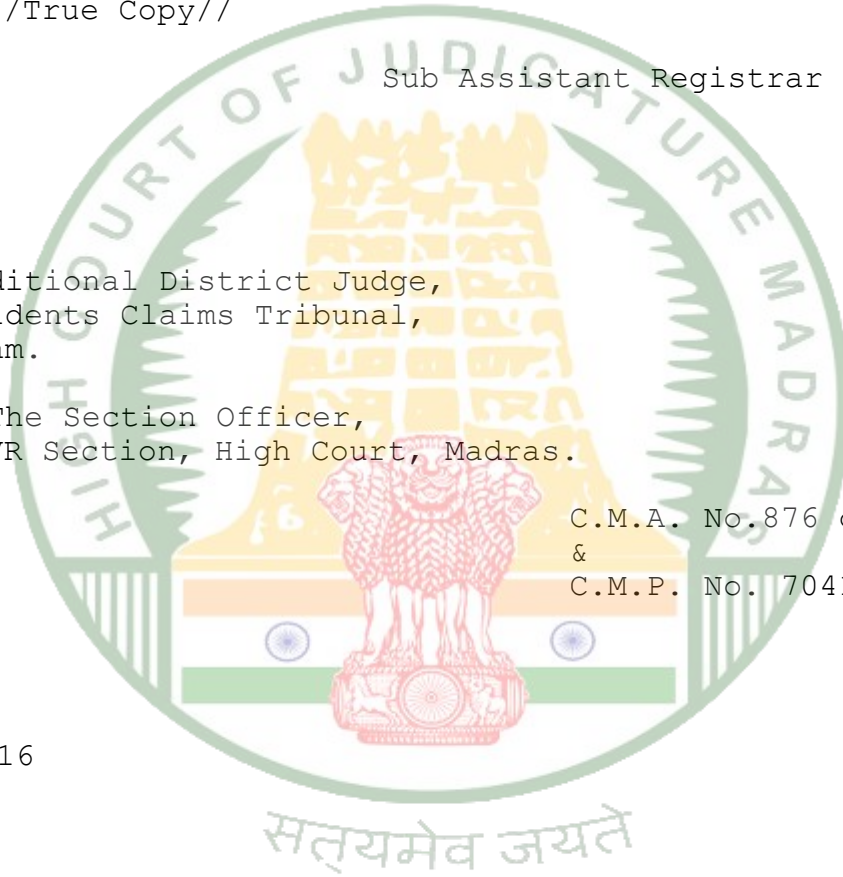
To

The II Additional District Judge,
Motor Accidents Claims Tribunal,
Chidambaram.

Copy to: The Section Officer,
VR Section, High Court, Madras.

C.M.A. No.876 of 2016
&
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GJ(CO)
Eu 19.09.16



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