

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1103 of 2017

and

C.M.P.No.5486 of 2017

The Managing Director,
Metropolitan Transport Corporation
Limited,
Chennai - 2.

... Appellant/Respondent

versus

Prabha @ Prabhakaran

... Respondent/Petitioner

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 30.04.2015 made in M.C.O.P.No.4021 of 2010 on the file of the Motor Accident Claims Tribunal (Special Sub Judge-II), Chennai.

For Appellant : Mr.S.Sivakumar

JUDGMENT

The claimant Prabha @ Prabhakaran, aged 17 years, a Helper by profession, earning a sum of Rs.4,500/- per month, met with an accident on 29.03.2010 and sustained severe head injury and laceration of right lower arm and upper forearm with muscle exposed; he also sustained injury over the right elbow and suffered fracture and skin grafting has also been done, in respect of those injuries. These injuries caused permanent disablement. Hence, the injured filed a claim petition in M.C.O.P.No.4021 of 2010 before the Motor Accident Claims Tribunal (Special Sub Judge-II), Chennai, claiming compensation of Rs.6,00,000/-. As against the claim made, the Tribunal has awarded a sum of Rs.2,70,000/-.

2. Contending that the quantum of compensation as excessive, the Transport Corporation has filed this appeal.

3. The break-up details of the compensation would help the Court to ascertain, whether the award under each and every heads is reasonable or not?

3.1. The break-up details of the compensation are as under:

For 25% partial and permanent disability,
the disability compensation awarded

at the rate of Rs.3,000/- per percent	-	Rs. 75,000/-
Pain and suffering	-	Rs. 50,000/-

Transportation charges	-	Rs. 10,000/-
Extra nourishment	-	Rs. 5,000/-
Cost of attendant	-	Rs. 5,000/-
Loss of future prospects	-	Rs. 50,000/-
Mental agony to the parents	-	Rs. 25,000/-
Loss of amenities	-	Rs. 50,000/-
	-	-----
Total	-	Rs.2,70,000/-
	-	-----

3.2. The Doctor who examined the claimant has certified the disability at 50%. Even though the doctor has certified the disability at 50%, the Tribunal has fixed the disability at 25%, giving the following reasons:

"12. Each hand component consists of 30 bones and out of which the petitioner had sustained fracture of only one bone, i.e. right humerus bone. As per the guidelines issued by the Government of India, the permanent physical impairment even for the amputation of elbow up to lower 1/3rd of forearm has been fixed at 80%. The petitioner was a minor boy aged about 17 years at the time of accident. He was at a bone growing stage and hence the fractured bones would have been united in a perfect and speedy manner without having any difficulty. P.W.2 has not produced any X-ray report to prove that the fracture bones were united in a wide manner. Hence, the disability assessed by PW2 at 50% for the fracture of a single humerus bone alone is definitely on the very higher side. The disability suffered by him is fixed at 25% only."

3.3. The Tribunal has given reasons to fix the percentage of disablement at a lesser rate. The Tribunal has awarded disablement compensation at Rs.3,000/- per percentage, by relying upon the decision reported in 2013 (2) TN MAC 583 (National Insurance Co. Ltd. vs. G.Ramesh and another).

4. The primary question to be considered is, whether for the injury sustained by the son, the parents can be awarded compensation for mental agony?

4.1. The answer is obviously 'no', as it is the settled principle that when the claimant has suffered injuries, the compensation is payable only to the injured and not to the dear and near, who would also be indirectly affected. Therefore, compensation of Rs.25,000/- on the head of mental agony to parents is liable to be set aside. However, the overall quantum is found to be reasonable as (a) the compensation for cost of attendant awarded at Rs.5,000/- is less and it has to be enhanced to Rs.12,000/-; (b) the loss of earning for treatment period at least for four months should have been awarded and the same is awarded at Rs.18,000/- (Rs.4,500 x 4). The overall quantum is reasonable and it does not require interference.

4. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 30.04.2015 passed in M.C.O.P.No.4021 of 2010 by the Motor Accident Claims Tribunal (Special Sub Judge-II), Chennai.

5. The Transport Corporation is directed to deposit the award amount of Rs.2,70,000/-, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposits, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

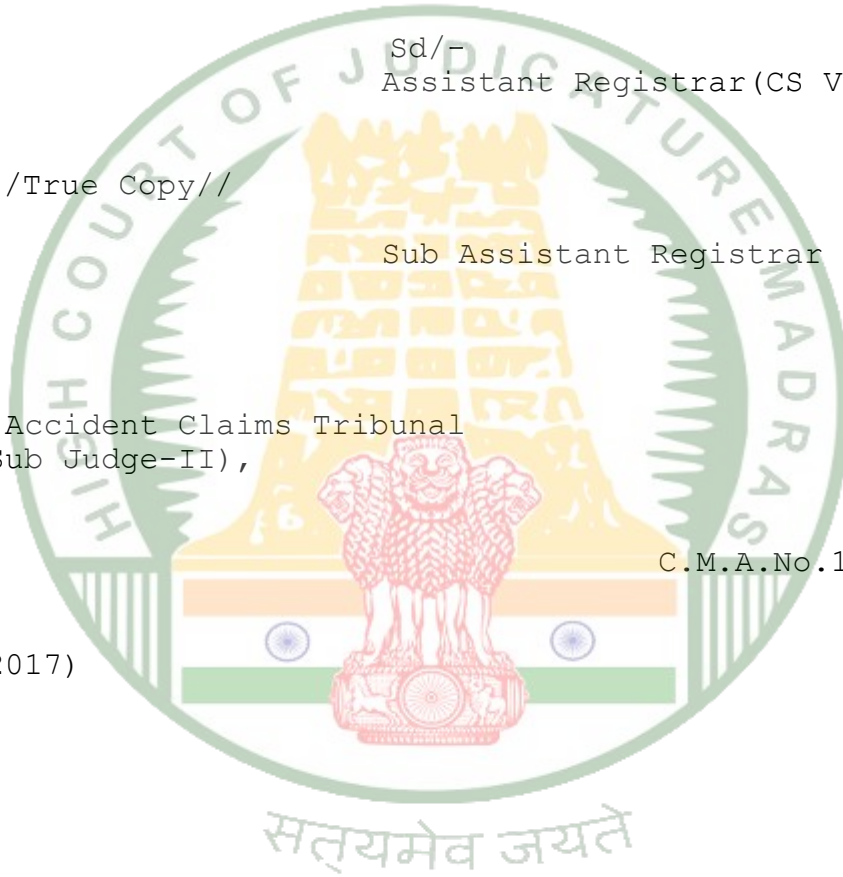
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To

The Motor Accident Claims Tribunal
(Special Sub Judge-II),
Chennai.

C.M.A.No.1103 of 2017

NRJK (CO)
CA(06/11/2017)



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