

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1515 of 2014

S.Loganathan

... Appellant/Claimant

versus

Tamil Nadu State Transport Corporation,
Rep. by its Managing Director,
Villupuram Division - I,
Villupuram.

... Respondent/Respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 17.08.2009, made in M.C.O.P.No.2740 of 2003 on the file of the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

For Appellant : Mr.C.Senthilnathan

For Respondent : Mr.D.Venkatachalam

JUDGMENT

One Loganathan, who suffered fracture of Zygoma, fracture of mandible, fracture of pelvic bone and fracture on right hip, in the accident, that took place on 16.05.2002, has filed a claim petition before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai, claiming compensation of Rs.3,00,000/-, as against which, the Tribunal has awarded only a sum of Rs.69,000/- as compensation along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. Challenging the award as inadequate, the claimant is before this Court.

2. The claimant, who was aged about 42 years at the time of accident, is a Turner by profession, earning a sum of Rs.15,000/- per month.

2.1. The Tribunal fixed the monthly income of the injured at Rs.4,500/- p.m. as there was no evidence to substantiate that he was running Moogambigai Turning Works and that on account of the accident, he sold the same.

2.2. The medical evidence would go to show that the claimant had taken treatment as inpatient from 16.05.2002 to 21.05.2002. Even though the result of fracture of pelvic bone is not stated in the case sheet, the Tribunal considered the fracture of other part of the body and thus, considered loss of earnings. Finding that he would not be in a position to do the job for two months, loss of earning capacity for two months has been considered by the Tribunal by awarding a sum of Rs.9,000/-.

2.3. No medical bills have been produced for medical expenses. The non-production of bills cannot mean that these two fractures would have been cured without spending money for medical expenses. With regard to the fracture, medical expenses of Rs.10,000/- is awarded.

2.4. Fracture on right zygoma and left mandible would certainly cause pain and sufferings and therefore, it is estimated at Rs.20,000/-.

2.5. The Doctor also spoke about the the difficulty of the claimant in swallowing food, standing, sitting and climbing up the stairs. The Doctor has certified the disability at 45%; by substantiating the same, by describing the difficulties in standing, sitting and climbing up the stairs. Therefore, the learned counsel for the Transport Corporation is right in contending that the disability sustained by the claimant would not have resulted in loss of earning capacity. However, this disability would cause of loss of enjoyment of amenities, which is estimated at Rs.20,000/-.

2.6. The disability compensation as awarded by the Tribunal is grossly inadequate. Therefore, it is estimated at Rs.50,000/- towards disablement compensation.

3. The learned counsel for the appellant would submit that extra nourishment and transportation ought to have been considered by the Tribunal and it is awarded at Rs.5,000/- under each head.

3.2. The break-up details of the enhanced compensation read as under:

Loss of earning for two months	-	Rs. 9,000/-
Medical Expenses	-	Rs. 10,000/-
Transport Expenses	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Disability	-	Rs. 50,000/-
Loss of enjoyment of amenities	-	Rs. 20,000/-
Pain and sufferings	-	Rs. 20,000/-

Total - Rs. 1,19,000/-

Rounded off - Rs. 1,20,000/-

4. In the result, this Civil Miscellaneous Appeal is allowed, enhancing the award amount from Rs.69,000/- to Rs.1,20,000/-, which is payable along with interest at the rate of 7.5% p.a. (less the interest for the default period, if any). No costs.

5. The Transport Corporation is directed to deposit the amount of Rs.1,20,000/-, less the amount deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit (less the interest for the default period, if any), within a period of four weeks, from the date of receipt of a copy of this order. On such deposit being made, the claimant/appellant is permitted to withdraw the award amount.

Sd/-
Assistant Registrar(J)

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सत्यमेव जयते
Sub Assistant Registrar

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To

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1. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division - I,
Villupuram.

2. The Motor Accident Claims Tribunal
(Chief Small Causes Court), Chennai.

+1cc to M/S.Senthil Swamy Associates, Advocate Sr.235

+1cc to Mr.K.J.Sivakumar, Advocate Sr.1115

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