

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No. 2861 of 2016
and
CMP.No.20694 of 2016

The Managing Director
Metropolitan Transport Corporation,
Chennai-2.

... Appellant/Respondent

versus

Albert Selvaraj

...Respondent/Petitioner

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Fair and Decreetal order dated 19.12.2014 made in M.C.O.P.No.35 of 2012 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Tiruvallur at Poonamallee).

For Appellant : Mr.S.Sivakumar

For Respondent : Mr.K.Varadha Kamaraj

J U D G M E N T

The claimant aged 50 years, a driver by profession, earning a sum of Rs.15,000/- per month, met with an accident on 14.11.2011 as a result of which, he sustained grievous injuries. Hence, he filed a claim petition in M.C.O.P.No. 35 of 2015 before the Motor Accidents Claims Tribunal claiming a sum of Rs.4,00,000/- as compensation.

2. The Tribunal on considering the oral and documentary evidence, awarded a sum of Rs.2,21,500/- as compensation, the break up details of which are as under:

Partial permanent disablement	-	Rs. 80,000/-
Pain and suffering	-	Rs. 25,000/-
Extra Nourishment	-	Rs. 10,000/-
Loss of income for 12 months	-	Rs. 78,000/-
Damage to clothing	-	Rs. 1,000/-
Medical Expenses	-	Rs. 27,250/-
Transport Expenses	-	Rs. 5,000/-
Total		<u>RS.2,21,250/-</u>

3. The contention of the learned counsel for the appellant is that the award is excessive and that in the absence of documentary evidence to prove the injuries, the Tribunal ought not to have passed the award. The learned counsel for the appellant further submitted that amount awarded under the head "loss of income" for twelve months is excessive and it could have awarded only for six months.

4. Even at the outset, it can be safely said that the contention of the appellant that no documentary evidence is available before the Tribunal and, therefore, the award passed is impermissible deserves to be rejected. Two witnesses, viz., P.W.s 1 and 2 have been examined and Exs.P-1 to P-12 have been marked on the side of the claimants. Therefore, the question of absence of documentary evidence does not arise.

5. In order to determine whether the award passed is excessive or not, it is relevant to consider the nature of injury and the period of treatment undergone by the claimant. The Tribunal has relied upon Ex.P-3, discharge summary wherein, it is stated that the claimant has suffered injury in the back bone and spinal cord and the partial permanent disablement has been assessed at 40%. Taking into consideration the disability at 40%, the Tribunal, adopting the percentage method had quantified the compensation at Rs.80,000/=-, i.e., Rs.2,000/- per percentage of disability. This amount, could in no way be termed as excessive or unreasonable considering the fact that the injury, which is a grievous one, sustained is in the back bone and spinal cord. The Tribunal was fully justified in awarding the above amount and, therefore, no interference is called for with the said compensation awarded.

6. Insofar as the contention relating to award of compensation under the head "Loss of Income" for 12 months is concerned, though the learned counsel for the appellant submitted that the same requires to be reduced to six months, however, considering the fact that the claimant was admitted as an in-patient for two spells and further the fact that the

claimant was on leave for a total of 711 days and that he could no longer perform his duties of driver with his employer and that he is on the look out for an alternative employment with the employer, it cannot be said that the compensation awarded under the head "Loss of Income" for 12 months is unreasonable or excessive. Though it was claimed that the claimant was earning a sum of Rs.15,000/= per month, as no documentary evidence was filed to prove the said claim, the Tribunal has fixed a nominal amount of Rs.6,500/= per month as the salary received and had computed the compensation at Rs.78,000/=.

7. On an overall consideration of the entire materials on record, the finding arrived at by the Tribunal and the quantification of compensation based on the said finding can neither be termed as unreasonable or excessive. Therefore, this Court is of the considered opinion that there are no grounds for interference and, accordingly, this appeal is liable to be dismissed.

8. In the result, the appeal is dismissed confirming the order dated 19.12.2014, passed in MCOP. No.35 of 2012. Consequently, connected Miscellaneous Petition is closed. No costs.

9. The appellant is directed to deposit the entire award amount as quantified by the Tribunal and confirmed by this Court, along with interest at 7.5% per annum, less the amount, if any, already deposited, to the credit of MCOP No.35 of 2012 on the file of the Motor Accident Claims Tribunal, Poonamallee, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the amount as ordered by the Tribunal by filing appropriate application.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

arr/GLN

To

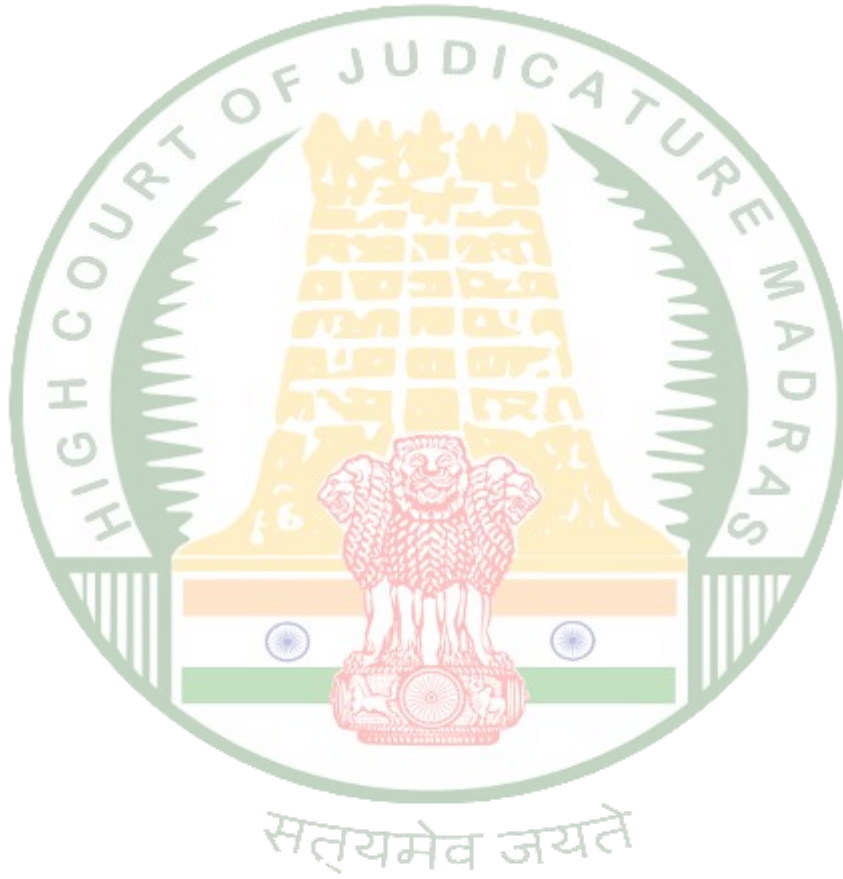
1. The Motor Accident Claims Tribunal
(II Additional District Judge)
Tiruvallur @ Poonamallee.

2. The Section Officer
VR Section, High Court
Madras.

+1cc to Mr.K.Varadha Kamaraj, Advocate in sr.1477

C.M.A. No.2861 of 2016

GMR (CO)
CS/07/02/18



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