

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 23.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A.No.227 of 2017
and
C.M.P.No.1548 of 2017

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai
Chennai-2. .. Appellant / Respondent

versus

R.Selvakumar .. Respondent/Petitioner

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 01.06.2016 made in M.C.O.P.No.7005 of 2013 on the file of the Motor Accidents Claims Tribunal (III rd Court of Small Causes), Chennai.

For appellant : Mr.S.Sivakumar

J U D G M E N T

Challenging the finding of negligence and quantum of compensation awarded by the Claims Tribunal in M.C.O.P.No.7005 of 2013, the Transport Corporation has filed this Civil Miscellaneous Appeal.

2. The claimant, Selvakumar, aged 21 years, doing catering and other service in Baskar Benzooinco, Chennai, earning a sum of Rs.8,000/- per month met with an accident on 08.05.2011 in which he sustained fracture in the right leg and also sustained other grievous injuries. Hence, he filed a claim petition in M.C.O.P.No.7005 of 2013, seeking compensation in a sum of Rs.4,00,000/-.

3. The claims Tribunal, on consideration of oral and documentary evidence awarded a sum of Rs.3,55,700/- as compensation, the break-up details of which are as follows:

Pecuniary Loss:

Loss of income	-	Rs. 57,288.00
Attender charges	-	Rs. 19,008.00
Transport to Hospital	-	Rs. 7,500.00
Extra Nourishment	-	Rs. 25,000.00
Damages to Clothes	-	Rs. 1,000.00
Medical Bills	-	Rs. 862.00

Non Pecuniary Loss:

Damages for mental shock and agony	-	Rs. 10,000.00
Pain and suffering	-	Rs. 40,000.00
Disfigurement	-	Rs. 25,000.00
Loss of Amenities	-	Rs. 50,000.00
Disability 40% @ Rs.3,000/-	-	Rs.1,20,000.00
Total		Rs.3,55,658.00

Aggrieved against the said compensation, the present appeal has been filed by the appellant.

4. Learned counsel for the appellant submits that the Claims Tribunal has erred in holding that the driver of the appellant Corporation drove the bus in a rash and negligent manner and caused the accident. It is further submitted by the learned counsel for the appellant that the evidence relating to negligence has not been properly appreciated by the Tribunal. It is further submitted that the compensation awarded by the Claims Tribunal is also very excessive and the same needs to be reduced.

5. A perusal of the award passed by the Claims Tribunal reveals that P.W.2, the doctor who examined the claimant, has assessed the disability @ 45% . He has also issued Ex.P16, Disability certificate. The opinion given in the disability certificate, for better appreciation of the matter, is extracted hereunder:

"Segmental Fracture right tibia and fibula"
"Pain and stiffness right leg and knee joint. Movements restricted. Knee flexion 0 to 90* only. Difficulty in walking/climbing steps/sitting across legged/squatting."

5. The Claims Tribunal, considering the certificate, Ex.P-16, issued by the P.W.2, has fixed the disability @ 40%. The

Claims Tribunal, based on the Judgment of this Court reported in 2013 (2) TN MAC 583 , has taken a sum of Rs.3,000/- per percentage of disability and awarded a sum of Rs.1,20,000/- (3000x40) towards disability, which cannot be said to be excessive or unreasonable. It is also pertinent to point out that the Tribunal has not adopted the multiplier method, but has adopted the percentage method and, therefore, it cannot be said that the compensation awarded at Rs.3,000/- per percentage of disability is excessive.

6. Further, the Tribunal on the basis of the ratio laid down by the Supreme Court in the decision in Syed Sadiq Vs. Deputy Manager, United India Insurance Co. Ltd., (2014 (1) TNMAC 459, has fixed the monthly income of the claimant at Rs.6,500/- and considering the fact that the claimant was aged 21 years at the time of accident and has taken treatment as inpatient for 88 days and might not be in a position to attend to his daily avocation and further he would also need further time of atleast six months to recuperate, has awarded a sum of Rs.57,288/- (268 days x Rs.216) towards Loss of income. The above compensation awarded by the Tribunal under the head loss of income and disability cannot be said to be excessive or unreasonable and, therefore, does not require any interference.

7. Insofar as the compensation awarded under the heads Attender charges, Transport Charges, Extra Nourishment, Damages to clothes, Mental shock and agony, Pain and suffering, disfigurement and Loss of amenities are concerned, considering the injuries suffered by the claimant and the period of hospitalisation, the compensation awarded under the above heads are quite reasonable and cannot be termed to be excessive and, therefore, the same need not be interfered with.

8. On the aspect of negligence, the Tribunal, taking into consideration the FIR registered in respect of the accident and that the driver of the bus has not come forward to lodge a police complaint, has fixed the negligence on the driver of the bus. The Tribunal has went on to hold that had the driver of the bus not been negligent or at fault, he would have lodged the complaint, the absence of which stares at the defence of the appellant herein. Therefore, considering all the evidence, the Tribunal rightly fixed the negligence on the part of the driver of the appellant Corporation and, therefore, the same does not require any interference.

9. In the result, this Civil Miscellaneous Appeal is dismissed confirming the award dated 01.06.2016, made in M.C.O.P.No.7005 of 2013. Consequently, connected Miscellaneous Petition is closed.

10. The appellant is directed to deposit the entire award amount together with interest from the date of claim petition till date of deposit to the credit of the claim petition, less the amount, if any, already deposited, within a period of four

weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the amount directly to the Bank Account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

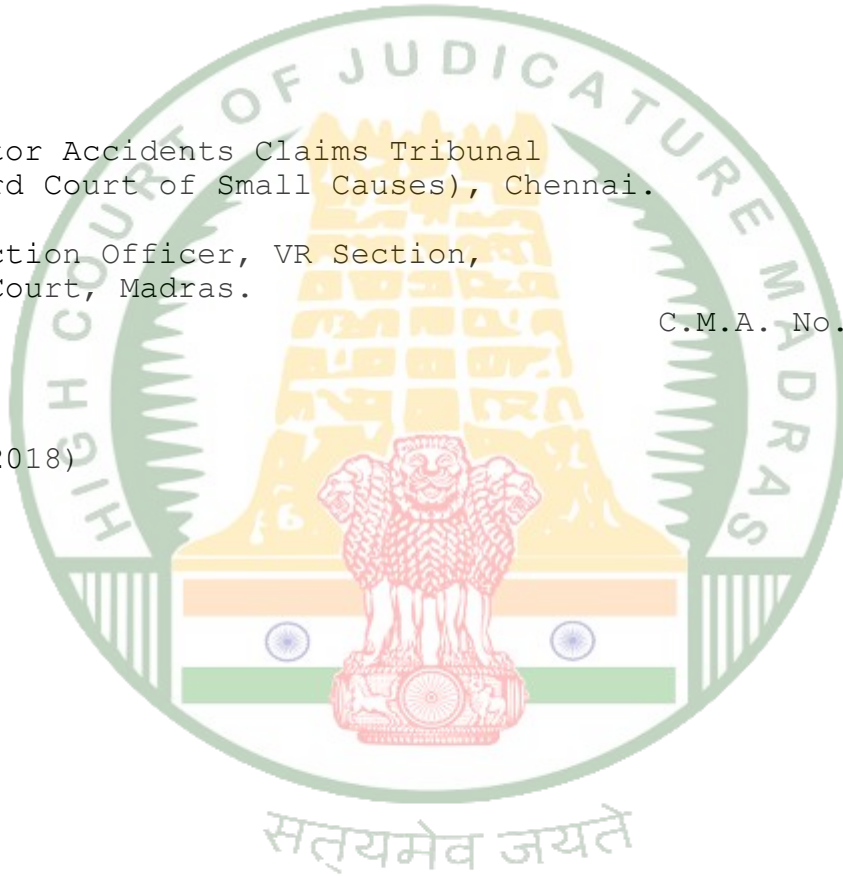
arr/GLN

To

1. The Motor Accidents Claims Tribunal
(III rd Court of Small Causes), Chennai.
2. The Section Officer, VR Section,
High Court, Madras.

C.M.A. No.227 of 2017

MR (CO)
GN (22/02/2018)



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