IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 02.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2133 of 2014

R. Sivashanmugam .. Appellant/Petitioner

versus

The Managing Director,
Metropolitan Transport Corp., Ltd.,
Chennai. .. Respondent/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and Decree dated 18.10.2010 made in M.C.O.P.No.4399 of 2005 on the file of Motor Accidents Claims Tribunal, (II Small Causes Court), Chennai.

For appellant : Mr.U.Chithambaram
for Mr.K.Varadha Kamaraj

For Respondent : Mr.K.S.Suresh

J U D G M E N T

While the accident is of the year 1998, the claim petition has been laid before the Tribunal only in the year 2005 which has reached finality only in the year 2010 against which appeal has been preferred before this Court in 2014. Therefore, this Court has to be cautious while awarding interest, as a large amount of interest would have to be paid by the Transport corporation while paying the amount of compensation.

2. The claimant, aged 22 years, doing business, earning a sum of Rs.5,000/- per month met with an accident on 01.08.1998. Hence, he filed a claim petition in M.C.O.P.No.4399 of 2005, before the Claims Tribunal, seeking compensation in a sum of Rs.8,00,000/-

3. The Tribunal, on consideration of oral and documentary evidence, quantified the compensation at Rs.2,59,000/- along with interest @ 7.5 % per annum from the date of petition till the date of deposit. The break-up details are as follows:

Permanent Disability	-	Rs.	90,000/-
Loss of earning during treatment	-	Rs.	15,000/-
Transport to Hospital	-	Rs.	1,000/-
Extra Nourishment	-	Rs.	3,000/-
Medical Expenses	-	Rs.	1,00,000/-
Pain and Sufferings	-	Rs.	50,000/-
Total		Rs.	2,59,000/-

4. The learned counsel for the Transport Corporation submits that the amount awarded towards permanent disablement compensation at Rs.90,000/- by adopting per percentage method and awarding Rs.2,000/- per percentage is on the higher side. Since the accident is of the year 1998, the Tribunal should have been conservative enough in fixing the amount per percentage. It is further submitted that since disablement compensation has been awarded, there is no scope for awarding compensation under the head loss of earning capacity. In fine, it is submitted that the compensation deserves to be reduced.

5. Heard the learned counsel appearing on either side and perused the materials available on record as also the findings rendered by the Tribunal.

6. In order to appreciate the contentions raised on either side, it is necessary to look into nature of injuries sustained and the evidence of the Doctor, who has spoken about disablement. According to the evidence of the Doctor, the claimant sustained fracture of right thigh bone and crush injury in the right thigh. He has also sustained fracture of hip bone. The fracture has been interlocked by nailing and the bones are malunited. There is a reduction of length in the right leg. The right leg looks ugly and hence the claimant has difficulty in bending due to hip injury. Considering the difficulty and the overall impact of the injury on the life of the claimant, the doctor assessed the disability @ 55%.

7. The Tribunal, while fixing the disability at 45%, adopting per percentage method of quantification has awarded compensation of Rs.90,000/- at Rs.2,000/- per percentage of disability.

8. This Court has time and again held that payment of compensation for disability and payment of compensation for loss of earning capacity are totally two different concepts and both cannot be clubbed together.

9. It is to be pointed out that the accident had occurred in the year 1998, while compensation reaches finality only in the

year 2017. The Tribunal, based on the medical records has fixed the disability at 45%, though the disability has been assessed and spoken to by the doctor at 55% and has awarded Rs.90,000/- by adopting per percentage method, however, this Court, on an analysis of the entire materials before it, is of the considered view that while fixing the disability at 55%, multiplier method has to be adopted in quantifying the compensation. The injuries sustained by the claimant, the treatment undergone cumulatively warrants that multiplier method to be adopted. Accordingly, while adopting multiplier method, this Court adopting the multiplier of 18, quantifies the compensation under the head permanent disability at Rs.2,37,600/- (2000x12x18x55/100).

10. It is further evident from the records that the claimant has spent Rs.1,00,000/- on medical expenses which clearly shows the gravity of the injury. Therefore, the claimant would definitely not have been in a position to attend employment for at least five months. Hence, loss of income for five months comes at Rs.3000/- per month comes to Rs.15,000/- and the same is awarded. Though the Tribunal has awarded Transport charges to the tune of only Rs.1000/-, however, this Court, in the facts of the case deems that an amount of Rs.10,000/- towards transport expenses would be a justifiable compensation. Similarly, an amount of Rs.3,000/- alone has been awarded towards extra nourishment. This Court is of the view that the grievous injuries suffered by the claimant would require more nourishment for the claimant to get back to normal. Accordingly, this Court awards Rs.10,000/- as compensation under the head Extra Nourishment.

11. The Tribunal has not awarded any amount towards loss of enjoyment of amenities. This Court deems it fit that a sum of Rs.25,000/- would be a justifiable compensation under the head loss of enjoyment of amenities. Similarly, a sum of Rs.15,000/- towards Attendant charges would be a justifiable compensation and a sum of Rs.1,000/- is awarded towards damage to clothing. The amount awarded towards medical expenses and pain and sufferings stand confirmed.

12. Insofar as award of interest is concerned, though the accident had taken place in the year 1998 and the claim petition has been filed in the year 2004 which has reached finality before this Court in the year 2017, considering the money value and the interest being paid on deposits, this Court is of the considered view that interest at 7.5% p.a. would be a just and reasonable interest, since it is evident from the records that the matter was not prolonged unnecessarily at the behest of one party or the other. Further, it is not the case of the appellant that the matter was unnecessarily delayed in reaching finality. Therefore, the claimant should not be penalised with

lesser interest for no fault on his part.

13. In the result, this Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs. 2,59,000/- to Rs. 4,63,600/- with interest @ 7.5% per annum from the date of petition till the date of deposit. However, there shall be no order as to costs.

14. The Respondent/Transport Corporation is directed to deposit the award amount as enhanced by this Court above along with interest at 7.5% p.a. from the date of petition till date of deposit, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the enhanced award amount along with interest directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. Court fee due, by the claimant, shall be paid before obtaining copy of the Judgment.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

arr/GLN

To

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

+1cc to Mr.K.Varadha Kamaraj, Advocate sr.6605

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