

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.01.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.243 of 2017

and

CMP.No.1566 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division,
No.3/137, Salamedu,
Villupuram-605 602. Appellant / 3rd
respondent

impleaded as per order in
MP.No.3141/10 dated 04.11.2011)

versus

1.V.Palani 1st respondent/Petitioner
2.Munuswamy Mudaliar 2nd respondent/1st
respondent
3.United India Insurance Co. Ltd.
No.14, Whites Road,
Chennai-14.3rd respondent/2nd
respondent

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the Judgment and Decree dated 28.10.2013 made in
M.C.O.P.No.1658 of 2008 on the file of the Motor Accident Claims
Tribunal, VI Small Causes Court, Chennai.

For appellant : Mr.K.J.Sivakumar

J U D G M E N T

The Claimant V.Palani, I.T.I. Student, aged 19 years, met
with an accident on 30.11.2007, due to which, he sustained
fracture of shaft of left humerus, nasal bone and nasal septum.
Hence, the claimant filed a Claim Petition in M.C.O.P.No.1658 of
2008, before the Motor Accident Claims Tribunal, Chennai.

2. The Claims Tribunal, on consideration of the oral and
documentary evidence has awarded a sum of Rs.3,46,000/-, with
interest @ 7.5% per annum, from the date of petition, till the

date of deposit. The break-up details of the same are as under:

Transportation, Extra Nourishment	-	Rs. 20,000/-
Damage to clothes	-	Rs. 200/-
Medical Expenses	-	Rs. 30,000/-
Loss of amenities	-	Rs. 25,000/-
Pain and suffering	-	Rs. 25,000/-
Disability of 50% at the rate of Rs.2000/- per percentage	-	Rs.1,00,000/-
Loss of future earning capacity	-	Rs.1,45,800/-
Total compensation is fixed at	-	Rs.3,46,000/-

2.1. Challenging the award as excessive and disproportionate, the Transport Corporation has filed this Civil Miscellaneous appeal.

3. The learned counsel for the appellant would contend that the Tribunal ought not to have adopted the multiplier method in quantifying the compensation under the head loss of future earnings. He would further submit that the permanent disability fixed at 50% is on the higher side.

4. A perusal of the award passed by the Claims Tribunal would go to show that the Tribunal, relying upon the principle that the award should be broad-based as enunciated by the Hon'ble Supreme Court, in S.Manickam Vs. Metropolitan Transport Corporation Limited, has quantified the compensation under various heads. Since, the claimant was the I.T.I. student, the Claims Tribunal has held that that Loss of income during treatment period does not arise and hence no compensation is awarded under the head 'loss of income' during treatment period.

4.1. Considering the distance from the place of accident to the hospital and the place of his residence, the Tribunal has awarded a sum of Rs.20,000/- under the head 'Transportation and Extra Nourishment'.

4.2. Considering the nature of injury sustained by the claimant, the Tribunal has awarded a sum of Rs.200/- towards damage to clothing. The amount awarded under the above heads are found to be reasonable.

4.3. Considering Ex.P8-Medical Bills, the Tribunal has awarded a sum of Rs.30,000/-, under the head Medical Expenses. The said amount is also reasonable.

4.4. The Claims Tribunal, relying upon the Full Bench Judgment of this Court in Cholan Roadways Corporation Ltd.,

Kumabakonam V. Ahmed Thambi and others, reported in 2006 (2) TNMAC 342 (FB) and also relying upon the decision of the Hon'ble Supreme Court in Divisional Controller, Karnataka State Road Transport Corporation Vs. Mahadev Shetty reported in 2003 ACJ 1775 SC, has awarded a sum of Rs.25,000/- under the head 'loss of Amenities'.

4.5. Relying another decision of this Court in Elango Vs. Natarajan and another reported in 2013 (1) TNMAC 812, the Tribunal has awarded a sum of Rs.25,000/- under the head Pain and Suffering and the same is reasonable.

4.6. Considering the evidence of P.W.2-the Doctor who examined the claimant and also considering the Ex.P10-Disability certificate, has fixed the disability at 50% and considering the age of the claimant and the injuries sustained, the Tribunal has quantified the disablement compensation, by applying the calculation, i.e. Rs.2,000/- per percentage and has awarded a sum of Rs.1,00,000/-

4.7. The Tribunal has taken into account of the fact that the claimant has undergone two surgeries for the fracture in humerus bone, which would certainly reduce the earning capacity as he was a student of I.T.I., which needs manual labour. Relying upon the Judgment of the Hon'ble Apex court in Raj Kumar Vs. Ajay Kumar and another reported in 2011 ACJ 1, has held that though the functional disability is assessed at 50%, his loss of earning capacity has to be assessed at 15% as he can do his avocation with some restrictions and by taking the monthly income at Rs.4,500/- per month and by adopting the multiplier of 18 has fixed a sum of Rs.1,45,800/- under the head 'Loss of future earning capacity' and the same is also found to be reasonable. The award under the heads 'loss of earning capacity' and 'disablement compensation' should mutually take into account the award under the other heads, so that the award is not excessive. So far as this case is concerned, even though disablement compensation has been awarded, loss of earning capacity has been considered not at 50%, but only at 15%. Hence, the award cannot be said to be excessive.

5. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the Judgment and Decree of the Claims Tribunal, in M.C.O.P.No.1658 of 2008, dated 28.10.2013, on the file of VI Judge, Court of Small Causes, Chennai.

5.1. The appellant/Transport Corporation shall deposit the entire amount of compensation, 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 deposit being made, the claimant is permitted

to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

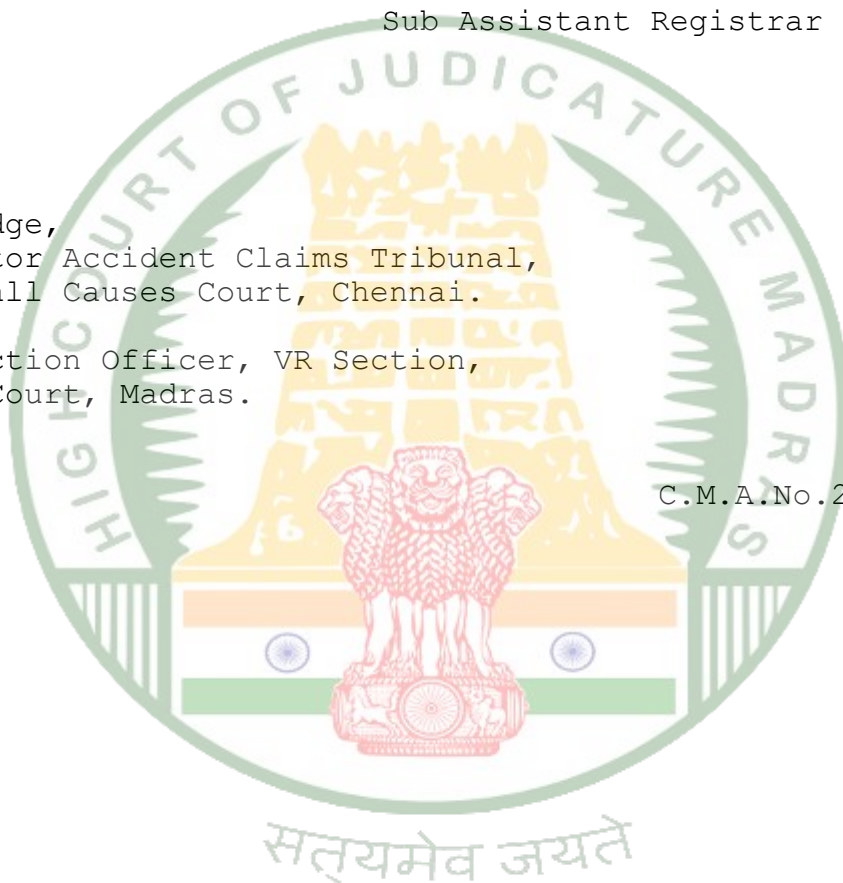
arr/ogy

To

1. The Judge,
The Motor Accident Claims Tribunal,
VI Small Causes Court, Chennai.
2. The Section Officer, VR Section,
High Court, Madras.

C.M.A.No.243 of 2017

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