

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 09.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.26 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Railway Station New Road,
Kumbakonam-612 001 .. Appellant /R1 in Tribunal

versus

1.S.Prabhu

2. G.Radhakrishnan

3.Divisional Manager,
M/s.Tata AIG General Insurance Co-limited,
No.1, Commander-in-Chief road, Ethiraj Salai,
Egmore, Chennai. .. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.04.2016 made in M.C.O.P.No.1289 of 2014 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Cuddalore.

For appellant : Mr.D.Venkatachalam
For respondent No.1 : Mr.R.Sreedhar
RR2 & 3 : Dismissed before Tribunal below

J U D G M E N T

Challenging the quantum of compensation as well as the multiplier method adopted by the Claims Tribunal, for quantifying the compensation for loss of earning capacity, the Transport Corporation has filed this appeal.

2. The claimant, Prabhu, aged 30 years, employed as Head Cook, earning a sum of Rs.30,000/- per month, met with an accident on 12.02.2014 in which he sustained fracture in both hands and also sustained other grievous injuries. Hence, the claimant filed a claim petition seeking compensation of a sum of Rs.30,00,000/=.

3. The Tribunal, considering the oral and documentary evidence, awarded compensation of Rs. 5,08,297/-, the breakup of which are as hereunder :-

Pain and sufferings	-	Rs. 25,000/-
Transport Expenses	-	Rs. 15,000/-
Extra Nourishment	-	Rs. 10,000/-
Damage to clothes	-	Rs. 5,000/-
Medical expenses	-	Rs. 29,297/-
Loss of earnings (5000x12x14x40%)	-	Rs.3,84,000/-
Future Medical Expenses	-	Rs. 40,000/-
Total		<u>Rs.5,08,297/-</u>

4. The learned counsel for the appellant submits that there is no loss of earning capacity to the respondent/claimant since the injuries sustained by him does not prevent him from carrying on his work, which he was doing prior to the accident and, therefore, the disability assessed at 40% has no bearing on his earning and would in no way affect his future earning capacity as well and, therefore, the award passed by the Tribunal needs to be interfered with.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

6. In the Accident Register, which has been marked by the claimant, reveals that the injury sustained by the claimant is grievous in nature. Further, the accident register reveals that the claimant has suffered fracture in both the hands and surgery has been performed by inserting a plate and that the plate it is yet to be removed. According to the doctor, P.W.4, the fracture sustained by the claimant would preclude from carrying out his day-to-day job as was done by him prior to the accident. The doctor, though has assessed the disability of the claimant at 50%, however, the Tribunal, on a conservative note, has fixed the disability at 40%.

7. The Tribunal has fixed the monthly income of the claimant only at Rs.5,000/- per month, though it was claimed by the claimant that he was earning a sum of Rs. 30,000/= per month. Fixing the monthly income of the claimant at Rs.5,000/= and assessing the disability at 40%, adopting the multiplier method, the Tribunal has quantified the "Loss of Earnings" at Rs.3,84,000/= (Rs.5000 X 12 X 14 X 40%). The Tribunal has applied its mind to the injuries sustained by the claimant and also on the basis of the materials placed before it, has fixed

the monthly income at Rs.5,000/= and has awarded a sum of Rs.3,84,000/=-, which cannot be said to be unreasonable or excessive. Further, adoption of multiplier method by the Tribunal is fully justified in the facts of the present case. Even on the other heads, the Tribunal has awarded just and reasonable compensation. Therefore, this Court is of the considered view that no interference is called for with the award passed by the Tribunal.

8. In the result, the appeal stands dismissed, confirming the Judgment and Decree dated 05.04.2016, passed by the Motor Accident Claims Tribunal (Special Subordinate Judge), Cuddalore, made in M.C.O.P.No.1289 of 2014. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

9. The appellant is directed to deposit the entire award amount as quantified by the Tribunal and confirmed by this Court above, along with interest at 7.5% per annum, less the amount, if any, already deposited, to the credit of M.C.O.P.No.1289 of 2014, on the file of Motor Accident Claims Tribunal, (Special Subordinate Judge), Cuddalore, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the amount as ordered by the Tribunal on filing appropriate application.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

arr/GLN
To

1. Motor Accident Claims Tribunal
(Special Subordinate Judge)
Cuddalore.

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

+1cc to Mr.R.Sreedhar, Advocate SR.No.1737

C.M.A. No.26 of 2017

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