

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.293 of 2017

and C.M.P.No.2089 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division - I) Limited,
Railway Station, New Road,
Kumbakonam - 612 001. ... Appellant/Respondent

versus

A.Kothandapani ... Respondent/Petitioner

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.04.2016 made in M.C.O.P.No.2660 of 2013 on the file of the Motor Accident Claims Tribunal, First Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.D.Venkatachalam
For Respondent : Mr.R.Sridhar

JUDGMENT

The claimant Kothandapani, aged about 60 years, doing brick business and an agriculturist, earning a sum of Rs.15,000/- per month, met with an accident on 03.06.2013 and sustained grievous injuries, in respect of which, he filed a claim petition in M.C.O.P.No.2660 of 2013 before the Motor Accident Claims Tribunal, First Additional Subordinate Judge, Cuddalore, claiming a sum of Rs.15,00,000/- as compensation.

1.1. As against the claim made for Rs.15,00,000/-, the Tribunal has awarded a sum of Rs.4,76,000/- as compensation with the following break-up details:

Permanent disability	-	Rs.2,45,000/-
Medical Expenses	-	Rs. 3,000/-
Pain and sufferings	-	Rs. 65,000/-
Loss of earning during the retirement period	-	Rs. 35,000/-
Loss of enjoyment and amenities	-	Rs. 50,000/-
Future medical expenses	-	Rs. 50,000/-
Attender charges	-	Rs. 10,000/-
Extra nourishment	-	Rs. 7,000/-

Transport expenses	-	Rs.	10,000/-
Damages to clothes	-	Rs.	1,000/-
Total	-		<u>Rs.4,76,000/-</u>

1.2. Challenging the quantum of compensation as excessive, the Transport Corporation has filed the present Civil Miscellaneous Appeal.

2. The main contention raised by the learned counsel appearing for the appellant is that the percentage of permanent disability fixed at 70% is higher; that the Tribunal failed to note that the disability calculated was not for the whole body, but for the particular limbs of the body; that there is an error in awarding Rs.3,500/- per percentage of disability instead of Rs.3,000/-; that Loss of amenities and future medical expenses are not relevant for this case.

3. Appreciation of those contentions requires the nature of injuries sustained. The injured has stated in his evidence that he suffered a) fracture of frontal bone in the right side of the head; b) right side jaw bone fracture; c) left hand 5th finger fracture; d) loss of four teeth; e) remaining teeth shaking; f) compressed fracture of D12 bone in the vertebrae; g) left hand various bone fracture.

3.1. The medical literature speaks that pain from a spinal compression fracture allowed to heal naturally can last as long as three months. But the pain usually improves significantly in a matter of days or weeks. Pain management may include analgesic pain medicines, bed rest, back bracing, and physical activity.

3.2. The claimant as well as the doctor, who examined the claimant would state that the injury sustained would certainly result in loss of earning capacity and according to Doctor, the percentage of disablement would be 70%. Pain and suffering awarded was Rs.50,000/- and for future medical expenses for removal of steel rod, Rs.20,000/- has been awarded.

3.3. The break-up details of the award may give an impression that there is duplication of award. Needless to point out that the fracture of the jaw bone along with compressed fracture in the vertebrae would have resulted in unexplainable pain and misery to the claimant and therefore,

pain and suffering cannot be said to be excessive, considering the old age of the claimant and injury sustained by the claimant. There had been continuous hospitalization from 04.06.2013 to 15.06.2013. Three fractures at a time in three different part of the body at the age 63 to 65 would certainly result in loss of earning capacity. Originally, the practice of awarding disablement compensation was at the rate of Rs.1,000/- per percentage and later, it was enhanced to Rs.2,000/- and still it was enhanced to Rs.3000/-. The enhancement to Rs.3,000/- was in the year 2009. Considering that the accident was in the year 2013, the Tribunal might have awarded Rs.3,500/- per percentage considering the cost of living.

4. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 25.04.2016 passed in M.C.O.P.No.2660 of 2013 by the Motor Accident Claims Tribunal, First Additional Subordinate Judge, Cuddalore.

5. The Transport Corporation is directed to deposit the entire award amount, 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, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

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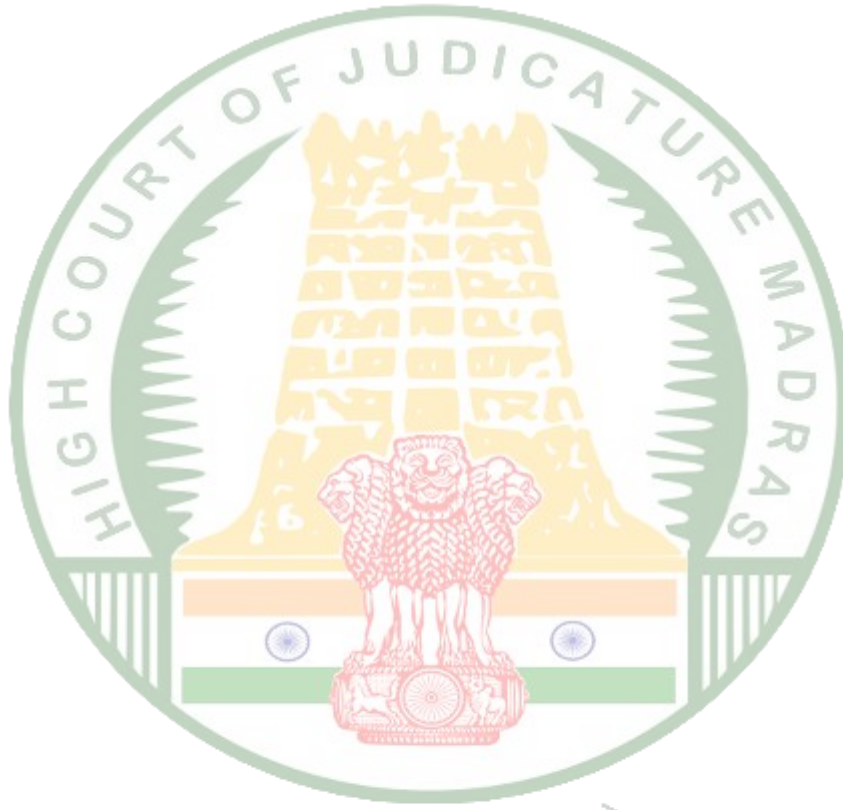
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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(First Additional Subordinate Judge),
Cuddalore.
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai.

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+1 cc to Mr.R.Sreedhar Advocate sr 10176
+1 cc to Mr.D.venkatachalam Advocate sr 10163

C.M.A.No.293 of 2017

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