

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 15.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.295 of 2017

and

CMP.No.2090 of 2017

The Managing Director
Tamil Nadu State Transport Corporation,
(Coimbatore Division - II) Ltd.,
Chennai-malai Road, Erode .. Appellant/Respondent

Versus

R.Maruthachalam .. Respondent/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1989 against the Judgment and Decree dated 21.08.2015 made in M.C.O.P.No.198 of 2010 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tiruppur.

For Appellant : Mrs.R.T.Sundari

For Respondent : Mr.Ma.Pa.Thangavel

J U D G M E N T

Challenging the liability as well as the quantum of compensation awarded by the Claims Tribunal, in M.C.O.P.No.198 of 2010, dated 21.08.2015, the transport Corporation has filed this Civil Miscellaneous Appeal.

2. On 09.01.2010 at about 7.30 hrs, when the respondent/claimant, who was aged 65 years, a sheep seller, was travelling in a vehicle bearing registration no.TN 39 AL 9465 from south to north on the Perumanallur to Thoravalur road, near Vallipuram bus stop, the bus bearing registration no.TN 3N 1033 driven by the driver in a rash and negligent manner dashed against the respondent. The respondent sustained grievous injuries all over the body and also suffered fracture at right pedax. The injured was taken to Kumaran Hospital, Tirupur and, thereafter, shifted to Ganga Hospital, Kovai, where he took treatment as an inpatient for more than two months. Therefore, the claimant filed a claim petition in M.C.O.P.No.198 of 2010, on the file of Motor Accident Claims Tribunal/ I Additional

District Court, Tiruppur, claiming compensation for a sum of Rs.5,00,000/-.

3. The Appellant / Respondent by way of a counter before the trial court has submitted that the accident occurred only due to the rash and negligent driving of two wheeler and hence the Respondent/ claimant can claim compensation only from the insurer of the two wheeler. It was further submitted that the compensation claimed under different heads are excessive.

4. The Tribunal, after considering the submissions made on either side and also on considering the oral and documentary evidence awarded a sum of Rs.2,80,000/- as compensation along with interest and costs. Challenging the same, the Transport Corporation has filed this present appeal.

5. According to the appellant/transport corporation, the Tribunal has wrongly held that the driver of bus was responsible for accident. It is his further contention that the compensation awarded by the Tribunal under the different heads taking into consideration the permanent disability at 35% is excessive.

6. The learned counsel for the claimant/respondent submits that the even while quantifying loss of earning capacity, there is an arithmetic mistake. As per the calculation made by the tribunal, the amount of compensation under loss of earning capacity should be Rs.88,200/- ($3000 \times 12 \times 7 \times 35 / 100$) but, the amount awarded is only Rs.75,600/- and therefore, the reduced amount may be enhanced.

7. In order to appreciate the contentions of both sides, it is necessary to go into the details regarding nature of injury suffered by the claimant and period of treatment.

8. A Perusal of the award passed by the Claims Tribunal reveals that the Tribunal, while quantifying the compensation under the head Loss of Earning Capacity has taken into account the evidence of P.W.3- the Doctor, who has deposed about the disability suffered by the claimant and the impact of the disability on the day-to-day life of the claimant. The doctor has assessed the partial permanent disability at 48.6%. and issued Ex.P6-Disability Certificate. Though the disability has been assessed at 48.6%, however, the tribunal has fixed the functional disability at 35%. However, a perusal of the order passed by the Tribunal reveals that the Tribunal has not discussed the basis on which it is assessing the disability at 35%. This Court, on a consideration of the entire materials available on record, both oral and documentary, is of the considered view that it would be safe to fix the partial permanent disability at 30%.

9. Fixing the partial permanent disability at 30% and adopting multiplier of 7 and taking the monthly salary at Rs.3,000/-, the compensation under the head loss of earning power is quantified at Rs.75,600/-, which has been awarded by the Tribunal.

10. Insofar as the compensation awarded under the other heads are concerned, the said compensation cannot be said to be excessive or disproportionate. The compensation awarded towards medical expenses is based on medical bills and therefore, the said compensation is confirmed. This Court finds that the award is just and reasonable and requires no interference.

11. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the award passed by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is dismissed.

12. The appellant shall deposit the entire amount of compensation as awarded by the tribunal, along with interest and costs, 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 amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. The Motor Accident Claims Tribunal,
I Additional District Court, Tiruppur.

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

+1 cc to M/s.R.T.Sundari Advocate sr 9970

+1 cc to M/s.Ma.P.Thangavel Advocate sr 10059

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