

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 02.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.4 of 2017
and CMP.No.19 of 2017

The Managing Director
Tamil Nadu State Transport
Corporation, Kudanthai Division-I
Railway Station Road,
Kumbakonam Town & Taluk
Thanjavur District ... Appellant /
Respondent

versus

Victor Vinodhkumar ... Respondent/Petitioner

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.03.2014 made in M.C.O.P.No.285 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Mayiladuthurai.

For appellant : Mr.D.Venkatachalam

J U D G M E N T
सत्यमेव जयते

The Claimant Victor Vinodkumar, aged 27 years, working as a College Principal met with an accident on 26.06.2012, as a result of which, he has sustained grievous injuries. Hence, he filed a Claim Petition in M.C.O.P.No.285 of 2012 before the Subordinate Judge, Maylaiduthurai, claiming a sum of Rs.50,00,000/- as compensation.

1.1. The Claims Tribunal, on considering the oral and documentary evidence, has awarded a sum of Rs.5,97,758/- as compensation. The break-up details of the same are as under:

10% permanent disability	-	Rs.2,04,000/-
Partial Permanent disablement	-	Rs. 90,000/-
Pain and suffering on account of surgery done for 7 times	-	Rs.1,00,000/-
Transportation and Nutrition	-	Rs. 25,000/-
Cost of Attendant	-	Rs. 30,000/-
Future Medical Expenses	-	Rs. 25,000/-
Loss of income for two months	-	Rs. 20,000/-
Medical Expenses as per bills	-	Rs.1,03,758/-
		Rs.5,97,758/-

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

2. The main contention of the learned counsel for the appellant is that there is no evidence to show that the alleged permanent disability would affect the earning capacity of the claimant and therefore, awarding a sum of Rs.2,04,000/- towards disability is unjustified.

2.1. In order to assess the physical disablement/functional disablement, the Tribunal has relied upon the evidence of Dr.Rajasekaran (P.W.2).

2.2. There is fracture of left thigh bone and fracture of both the bones in the right leg below knee. The fracture is not a hairline fracture, but a multiple fracture. It is alleged that because of the blood pressure, surgery could not be performed initially and the claimant was in bandage for some time. External fixation has been done for the thigh bone and later on, it has been removed by another surgery. During the fifth time, for the thigh bone, surgery has been performed by interlocking method. As the tibia bone did not unite, bone has been taken from the hip and it has been used in the place of tibia bone. Even after surgery for seven times, the claimant is able to walk only with a walker. Considering the nature of injuries, it cannot be said that it would not affect the earning capacity of the claimant. The amount of Rs.90,000/- would go to the loss of enjoyment of amenities.

2.3. While calculating loss of earning capacity, the Tribunal has taken the loss of earning capacity as only 10%, i.e. Rs.1,20,000 x 10/100 x 17 = Rs.2,04,000/-.

3. It is also contended that the monthly income of the deceased was taken at Rs.10,000/- without any documentary evidence, which is also on the higher side. This contention is incorrect as the Tribunal has fixed the monthly income based upon the salary certificate and the evidence of one Kanagasabai (P.W.3). It is also to be pointed out that there was not even a suggestion put to the witness that the injured was not earning Rs.10,000/- p.m. Hence, the Tribunal has right in fixing the monthly income at Rs.10,000/-.

4. The details of award passed would go to show that the award cannot be said to be excessive and in a way, it can be said that it is low on some head.

5. In the result, this Civil Miscellaneous Appeal stands dismissed confirming the award dated 03.03.2014, passed in M.C.O.P.No.285 of 2012 by the Motor Claims Tribunal, Principal Subordinate Judge, Mayiladuthurai.

5.1. The 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 III)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

arr/ogy

To

1. The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Mayiladuthurai.

WEB COPY

+1 cc to M/s.D.Venkatachalam Advocate sr 141
+1 cc to M/s.T.Gobinath Advocate sr 521

C.M.A.No.4 of 2017

rr(co)
aa22/11/2017



WEB COPY